

FINAL RULE – 2021R-05F

Definition of “Frame or Receiver” & Identification of Firearms

Final Rule 2021R-05F was signed by the Attorney General on April 11, 2022 and was published in the Federal Register on April 26, 2022. The rule will become effective August 24, 2022, 120 days from the date it was published.

Definition of “Frame” and “Receiver”

The Final Rule does:

- Provide regulatory definitions of “frame” and “receiver” reflecting technological advancements and judicial developments since the regulatory definitions were originally issued;
- Identify a single part of each weapon as a “frame” or “receiver;”
- Provide specific examples and pictures of those parts of popular firearms that are classified as the “frame” or “receiver;”
- Address the classification of partially complete (commonly referred to as “80%”) frames or receivers that are sold, distributed, or possessed with the associated templates, jigs, molds, equipment, tools, instructions, guides.
- Address partially complete, disassembled, or nonfunctional frames or receivers that are sold, distributed, or possessed within parts kits.

The Final Rule does not:

- Change the “part” of firearms previously classified as the “frame or receiver;”
- Prohibit individuals from making firearms for personal use.

Background

The predecessor to the Gun Control Act (GCA) – the Federal Firearms Act – regulated “any part or parts” of a firearm.¹ While debating the GCA, Congress recognized that it was “impractical to have controls over each small part of a firearm” and therefore substituted “firearm frame or receiver” for the words “any part or parts.”² Since passage of the GCA in 1968, the term “firearm frame or receiver” has been defined by regulation.

On December 14, 1968, the Department of the Treasury published final regulations and defined “firearm frame or receiver” as “that part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.” This definition has remained unchanged since that time.

¹ 52 Stat. 1250, June 30, 1938.

² Cong. Rec. S. 5527 (March 22, 1965) (Statement by Senator Dodd).

The 1968 definition described a housing for three fire control components: hammer, bolt or breechblock, and firing mechanism. However, numerous firearms do not utilize a hammer. Further, the vast majority of firearms commonly used today—including the AR-15 and variants—do not have a single housing for all of those components. See Figure 1.

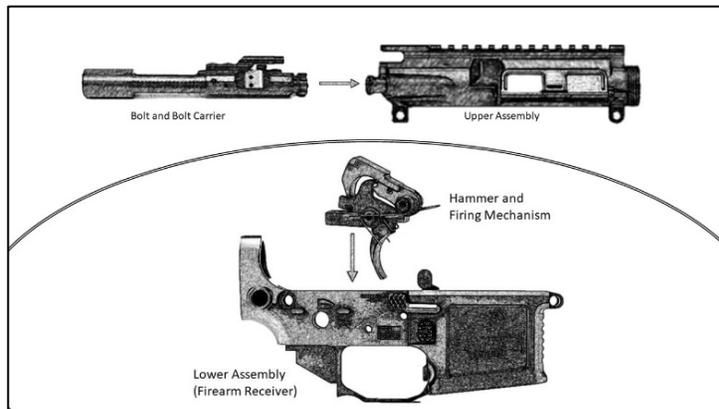


Figure 1

In addition, the original definition of “firearm frame or receiver” lacked analysis as to the stage at which an item is regulated as a frame or receiver. New technology and manufacturing processes complicated the analysis. Further, as ATF stated in the final rule, Federal courts have applied ATF’s definition of “frame or receiver” in a way that would leave most firearms currently in circulation in the United States without an identifiable frame or receiver.³

Amended Regulation

The final rule includes a new section—27 CFR 478.12—that defines “frame or receiver,” and addresses issues of interest to the firearm industry and the public. This definition is also incorporated in, and applies to, 27 CFR Parts 447 and 479. The definition provides greater detail and analysis, better accounts for diverse and modern firearm designs, provides greater detail on when an item becomes regulated as a frame or receiver, and addresses those firearms with frames or receivers that are further broken down to constituent parts. The final rule also defines which part of a firearm silencer is the “frame or receiver.”

The term “frame” now refers to the part of a handgun or “variants” (also a defined term) using a handgun design, that provides housing or a structure for the sear or equivalent—that part that holds back the hammer, striker, bolt, or similar component prior to firing. The term “receiver” means the part of a rifle, shotgun, or projectile weapon other than a handgun, or variants, that provides housing or a structure for the bolt, breechblock or other primary component designed to block or seal the breech prior to firing.

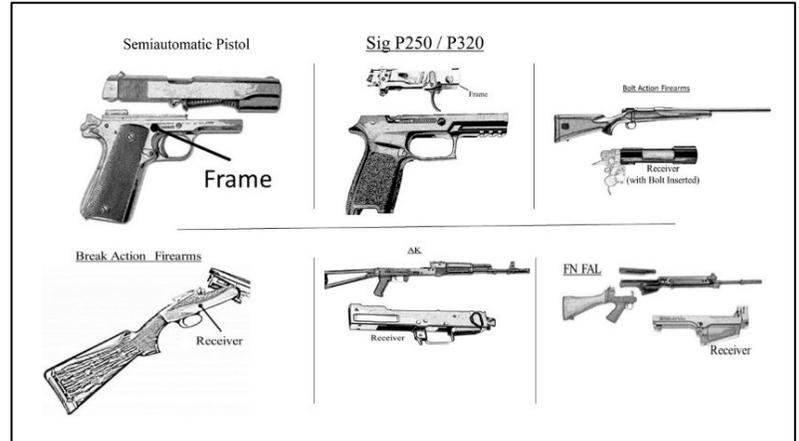
The regulatory language in 27 CFR 478.12(a)(4) includes analysis and pictures of the frame or receiver of specific firearms and variants to better guide the public and the firearms industry. This includes revolvers, pistols—including those using chassis systems, bolt action rifles, various

³ See *United States v. Rowold*, 429 F. Supp. 3d 469, 475–76 (N.D. Ohio 2019) (“The language of the regulatory definition in § 478.11 lends itself to only one interpretation: namely, that under the GCA, the receiver of a firearm must be a single unit that holds three, not two components: 1) the hammer, 2) the bolt or breechblock, and 3) the firing mechanism.”); *United States v. Roh*, SACR 14-167-JVS, Minute Order p. 6 (C.D. Cal. July 27, 2020); *United States v. Jimenez*, 191 F. Supp. 3d 1038, 1041 (N.D. Cal. 2016).

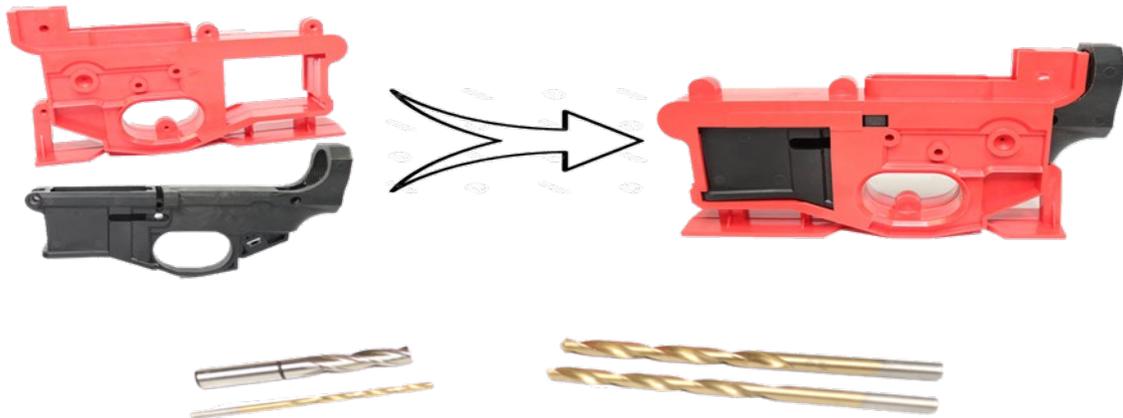
shotgun designs, AK variants, Steyr AUG variants, Thompson submachineguns, HK variants, FN-FAL, and Stens. See Figure 2 for examples.

Figure 2

In addition, the final rule addresses “partially complete, disassembled, or nonfunctional” frames or receivers, and provides standards that the industry and the public can apply to better determine whether the component has reached the stage of manufacture to be regulated as a “frame or receiver.” This makes clear that the “frame or receiver” includes a partially complete frame or receiver, including a parts kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver. Further, it is important to note that in classifying any frame or receiver, “the Director may consider any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are sold, distributed, or possessed with the item or kit, or otherwise made available by the seller or distributor of the item or kit to the purchaser or recipient of the item or kit.”



Example 1— Frame or receiver: A frame or receiver parts kit containing a partially complete or disassembled billet or blank of a frame or receiver that is sold, distributed, or possessed with a compatible jig or template is a frame or receiver, as a person with online instructions and common hand tools may readily complete or assemble the frame or receiver parts to function as a frame or receiver.



Example 2— Not a receiver: A billet or blank of an AR-15 variant receiver without critical interior areas having been indexed, machined, or formed that is not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools such that it may readily be completed is not a receiver.



The rule makes clear that the terms shall not include a forging, casting, printing, extrusion, unmachined body, or similar article that has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon (*e.g.*, an unformed block of metal, liquid polymer, or other raw material). This change makes clear that many of the products currently marketed and sold as unregulated “80% kits” contain a firearm frame or receiver that will be regulated by Federal firearms law.



The rule also clarifies that the definition of “firearm” includes a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive. These kits are commonly known as “buy build shoot” kits.



The term “firearm” does not include a weapon, including a weapon parts kit, in which the frame or receiver of such weapon is “destroyed” as described in the definition “frame or receiver.”

Finally, the rule provides that prior determinations that a partially complete, disassembled, or nonfunctional frame or receiver, including parts kits, was not, or did not include, a frame or receiver prior to April 26, 2022, are not valid or authoritative.

With these changes, it is important to understand those things that are unchanged by the final rule. Specifically, that the “part” of a firearm classified as the “frame” or “receiver” prior to publication of the final rule will continue to be classified as the “frame” or “receiver” under Federal law.

For example, pursuant to 27 CFR 478.12(a)(2), the “receiver” of an AR-15/M-16 variant firearms would have been the upper assembly, as it provides housing for the bolt. However, the final rule in section 478.12(f) makes clear that since the AR-15/M-16 variant receiver was previously classified by ATF as the lower part of the weapon that provides housing for the trigger mechanism and hammer (*i.e.*, lower receiver), it is the receiver. See Figure 3. The rule also identifies the frame or receiver of the Ruger Mark IV pistol (upper part) and the Benelli 1221 M1 Shotgun (lower part) as other examples.

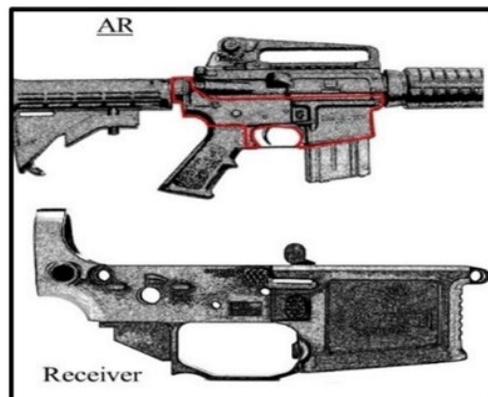


Figure 3

In addition, the final rule states that, consistent with ATF’s long-standing classifications and ATF Ruling 2010-3, the right-side plate of “box-type” receivers will continue to be the “receiver” of the firearm. See Figure 4. Specifically, the receiver “is the side plate of the weapon that is designed to hold the charging handle.” This includes the Vickers/Maxim, Browning 1919, M2, and box-type machineguns and semiautomatic variants.

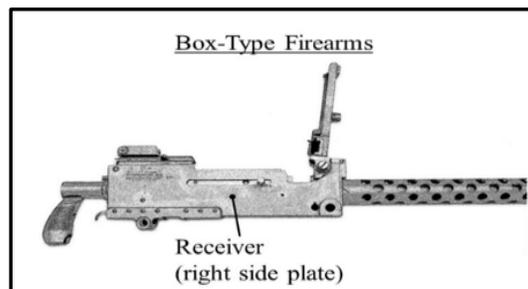


Figure 4

Questions and Answers

Q1: How does the new regulation affect the definition of “firearm frame or receiver”?

A1: The final rule establishes an entirely new section in the GCA regulations—27 CFR 478.12 that defines “frame or receiver.”

Q2: Why was it necessary to amend the regulatory definition of “firearm frame or receiver”?

A2: The regulatory definitions of “firearm frame or receiver” and “frame or receiver” in 27 CFR 478.11 and 479.11 describe a housing for three fire control components: hammer, bolt or breechblock, and firing mechanism; however, the vast majority of firearms in common use today do not have a single housing for all of those components. Some Federal courts applied ATF’s definition of “frame or receiver” in a way that would leave most firearms currently in circulation in the United States without an identifiable frame or receiver. This judicial interpretation is

inconsistent with the Congressional intent of regulating a single part as the “firearm frame or receiver” and therefore it was necessary for ATF to amend the regulatory definition.

Q3: What are the major changes to the regulatory definition of “frame or receiver”?

A3: The regulatory definition distinguishes between “frames” and “receivers.” “Frame” now refers to the part of a handgun that provides housing or a structure for the primary energized component designed to hold back the hammer, striker, bolt, or similar component prior to initiation of the firing sequence (*i.e.*, sear or equivalent). A “receiver” is a part of a rifle, shotgun, or other projectile weapon other than a handgun that provides housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence (*i.e.*, bolt, breechblock, or equivalent).

Q4: Is the “receiver” of an AR-15/M-16 variant now the upper assembly as that part “provides housing” for the bolt?

A4: No. The part of a weapon determined (classified) by the Director as the firearm “frame” or “receiver” prior to publication of the final rule will remain the “frame” or “receiver” of that weapon. Therefore, the lower assembly will remain the “receiver” of the AR-15/M-16 and variants thereof. Similarly, the right side plate of a Maxim/Vickers, Browning 1919, M2 will continue to be regulated as the “receiver” of such weapon.

Q5: Does the final rule impact kits that contain “80% receivers”?

A5: Yes. The final rule addresses “partially complete, disassembled, or nonfunctional” frames or receivers. With this, the final rule confirms that many of the products currently marketed and sold as unregulated kits and components are properly classified as “firearms” that are regulated by the federal law, including “a frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver.”

Q6: Which “80% receiver” kits are regulated under the final rule?

A6: When classifying such a kit, the Director may consider any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are sold, distributed, or possessed with the item or kit, or otherwise made available by the seller or distributor of the item or kit to the purchaser or recipient of the item or kit. The terms shall not include a forging, casting, printing, extrusion, unmachined body, or similar article that has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon (*e.g.*, an unformed block of metal, liquid polymer, or other raw material).

Q7: May a prohibited person lawfully possess an “80% receiver” kit?

A7: A prohibited person may NOT possess such a kit if it “is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver.” To determine whether a kit is so designed, or may readily be completed, assembled, restored or converted, ATF may consider any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are sold, distributed, or possessed with the item or kit, or otherwise made available by the seller or distributor of the item or kit to the purchaser or recipient of the item or kit.

Privately Made Firearm (“PMF”)

The Final Rule does:

- Amend [27 CFR 447.11 and 478.11](#) to define a firearm made by a nonlicensee without a serial number as a “Privately Made Firearm” (“PMF”);
- Amend 27 CFR 478.11 to define the term “engaged in the business” pertaining to a “gunsmith” to include persons who engage in the business of marking PMFs;
- Amend 27 CFR 478.92(a)(2) to require all FFLs to identify (mark) any “PMF” they take into their inventory;
- Amend 27 CFR 478.92(a)(4)(iii)(D) to allow adoption of a private maker’s serial number;
- Amend 27 CFR 478.92(a)(4)(vi) to specifically address PMF’s acquired prior to the effective date.

The Final Rule does not:

- Prohibit an individual from making their own PMF;
- Mandate unlicensed persons to mark their own PMF;
- Require an FFL to accept unmarked PMFs into their inventory;
- Apply to firearms identified and registered in the NFRTR, pursuant to the
- NFA, [26 U.S.C. 5842](#) and [27 CFR 479.102](#), upon approval of an [ATF Form 1](#);
- Apply to firearms manufactured or made before the effective date of the Gun
- Control Act of 1968, October 22, 1968, unless remanufactured after that date.

The Final Rule amends [27 CFR 447.11 and 478.11](#) to define a firearm made by a nonlicensee without a serial number as a “Privately Made Firearm” (“PMF”). A PMF is “[a] firearm, including a frame or receiver, completed, assembled, or otherwise produced by a person other than a licensed manufacturer, and without a serial number placed by a licensed manufacturer at the time the firearm was produced. The term shall not include a firearm identified and registered in the National Firearms Registration and Transfer Record pursuant to chapter 53, title 26, United States Code, or any firearm manufactured or made before October 22, 1968 (unless remanufactured after that date).”

Definition of a Gunsmith

To ensure greater access to professional marking services for PMFs, the Final Rule amends the definition of the term “engaged in the business” pertaining to a “gunsmith” to include persons who engage in the business of marking PMFs.

Specifically, the Final Rule amends 27 CFR 478.11:

Engaged in the business—

*(d) **Gunsmith.** A person who, as a service performed on existing firearms not for sale or distribution, devotes time, attention, and labor to repairing or customizing firearms, making or fitting special barrels, stocks, or trigger mechanisms to firearms, **or placing marks of identification on privately made firearms in accordance with this part**, as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who occasionally repairs or customizes firearms (including identification), or occasionally makes or fits special barrels, stocks, or trigger mechanisms to firearms. In the case of firearms for purposes of sale or distribution, such term shall include a person who performs repairs (e.g., by replacing worn or broken parts) on complete weapons, **or places marks of identification on privately made firearms**, but shall not include a person who manufactures firearms (i.e., frames or receivers or complete weapons) by completion, assembly, or applying coatings, or otherwise making them suitable for use, requiring a license as a manufacturer;*

Required Markings on PMFs

The Final Rule amends the regulations to require all FFLs to identify (mark) any PMF they take into their inventory. This requirement will allow licensees to comply with GCA recordkeeping requirements when accepting PMFs and allow ATF to trace those firearms through licensees' records if involved in a crime.

Licensees who take a PMF into inventory are required to mark the PMF with an individual serial number that begins with the FFL's abbreviated license number, which is the first three and last five digits, as a prefix to a unique identification number, followed by a hyphen, e.g., "**12345678-[unique identification number]**" in accordance with 478.92. The markings must be completed no later than seven days upon receipt or before the date of disposition, whichever is sooner.

Notably, licensees are not required to mark PMFs received for same day adjustment or repair and returned to the person from whom it was received.

The Final Rule amends [27 CFR 478.92\(a\)](#):

*(2) Privately made firearms (PMFs). Unless previously identified by another licensee in accordance with, and except as otherwise provided by, this section, licensees must legibly and conspicuously identify each privately made firearm or "PMF" received or otherwise acquired (including from a personal collection) not later than the seventh day following the date of receipt or other acquisition, or before the date of disposition (including to a personal collection), whichever is sooner. PMFs must be identified by placing, or causing to be placed under the licensee's direct supervision, an individual serial number on the frame or receiver, which must not duplicate any serial number placed by the licensee on any other firearm. The serial number must begin with the licensee's abbreviated Federal firearms license number, which is the first three and last five digits, as a prefix to a unique identification number, followed by a hyphen, e.g., "12345678-[unique identification number]". The serial number must be placed in a manner otherwise in accordance with this section, including the requirements that the serial number be at the minimum size and depth, and not susceptible of being readily obliterated, altered, or removed. **An acceptable method of identifying a PMF is by***

placing the serial number on a metal plate that is permanently embedded into a polymer frame or receiver, or other method approved by the Director.

ATF has long held that placing a serial number directly on the polymer does not meet the specified requirement of 27 CFR 478.92 since marking in this manner would make the serial number “susceptible [to] being readily obliterated, altered or removed”.

Serialized PMF Markings

In instances in which the PMF is already marked by a nonlicensee with a unique identification number that otherwise complies with 478.92, FFLs may establish a PMF serial number by placing their abbreviated license number (first three and last five digits) followed by a hyphen, e.g., “**12345678-[unique identification number]**”. The resulting serial number must be unique and therefore may not duplicate any number that the FFL has previously placed on a firearm. FFLs must be aware of the serial numbers they have used/marked.

The Final Rule amends 27 CFR 478.92(a)(4)(iii)(D) to allow for such adoption of a PMF serial number:

(4) Exceptions.

(iii) Adoption of identifying markings. Licensees may adopt existing markings previously placed on a firearm and are not required to mark a serial number or other identifying markings in accordance with this section, as follows:

(D) Privately made firearms marked by nonlicensees. Unless previously identified by another licensee in accordance with this section, licensees may adopt a unique identification number previously placed on a privately made firearm by an unlicensed person, but not duplicated on any other firearm of the licensee, that otherwise meets the identification requirements of this section provided that, within the period and in the manner herein prescribed, the licensee legibly and conspicuously places, or causes to be placed, on the frame or receiver thereof a serial number beginning with their abbreviated Federal firearms license number, which is the first three and last five digits, followed by a hyphen, before the existing unique identification number, e.g., “12345678-[unique identification number]”.

PMF Marking Timeframe

PMFs acquired by FFLs **prior to August 24, 2022**, the effective date of the Final Rule (“effective date”), that are in an FFLs’ inventory on the effective date, must be marked within 60 days from the effective date (*i.e.*, by October 23, 2022). Also, any such PMF transferred within 60 days from the effective date must be properly marked before the PMF may be transferred.

The Final Rule at 27 CFR 478.92(a)(4)(vi) specifically addresses PMF’s acquired prior to the effective date. The amended regulation states, in part:

(4) Exceptions.

(vi) Privately made firearms acquired before the effective date of the final rule, August 24, 2022. Licensees shall identify in the manner prescribed by this section, or cause another person to so identify, each privately made firearm received or otherwise acquired (including from a personal collection) by the licensee before August 24, 2022 within sixty (60) days from that date, or prior to the date of final disposition (including to a personal collection), whichever is sooner.

FFLs who acquire PMFs **after** the effective date are required to mark PMFs within seven (7) days of receipt (or before date of disposition, whichever is sooner). 27 CFR 479.92(a)(2).

Other Persons Marking PMFs for an FFL

FFLs that do not have the capability to mark a PMFs may take PMFs they receive to another FFL, or to a nonlicensee, to have those PMFs marked under their direct supervision in accordance with 27 CFR 478.92(a)(2). Under section 478.125(i), an FFL who marks an unmarked PMF for the original FFL who received the PMF into inventory shall not log the firearm into its records if the firearm is marked on-the-spot under the direct supervision of the original licensee who recorded the acquisition of the firearm. The marking licensee shall mark the firearm with the original licensee's FFL number in accordance with 478.92(a)(2).

A nonlicensee may mark a PMF for the original FFL who received the PMF provided it is marked on-the-spot, under the direct supervision of the original licensee, and with the original licensee's FFL number.

Notably, an individual that devotes time attention and labor to placing marks of identification on privately made firearms as a regular course of trade or business with the principal objective of livelihood and profit must be licensed as a dealer-gunsmith.

In no case may the original licensee dispose of an unmarked PMF until the firearm is properly marked and the serial number is recorded in the original licensee's records.

PMF Recordkeeping and Marking Requirements

The Final Rule does:

- Amend 27 CFR [478.125\(i\)](#), requiring licensees to record the acquisition and disposition of a PMF required by this part;
- Apply to Importers, Manufacturers, Dealers, and Curio or Relic Collectors;
- Amend A&D recordkeeping requirements to require licensees to record "privately made firearm" or "PMF" in the "Description of Firearm" section (formerly licensed manufacturer and/or licensed importer name);
- Require licensees to record the acquisition of a PMF by the close of the next business day following receipt of the firearm;

- Except in the case of same day adjustment/repair returned to the person from whom received, PMFs must be marked within 7 days of acquisition, or prior to disposition, whichever is sooner;
- Amend [27 CFR 478.124](#) in part to require licensees to record “privately made firearm” or “PMF” on the ATF Form 4473 for over-the-counter transactions and, pursuant to 18 U.S.C. 922(c), other than over-the counter transactions;
 - Where no manufacturer name has been identified on a privately made firearm, the words “privately made firearm” (or abbreviation “PMF”) shall be recorded as the name of the manufacturer.
- Amend 27 CFR 478.92(a)(1)(ii) so that for new designs, the serial number, name of licensee, and either their city and State of their place of business; or their abbreviated FFL number must be on the frame or receiver, no longer on the barrel (or pistol slide).
- Defines “multi-piece frame or receiver” at 27 C.F.R. 478.12;
- Manufacturers and makers of complete muffler or silencer devices only need to mark the part of the device that is designated the “frame or receiver”;
- Defines *Firearm muffler or silencer frame or receiver* at 27 C.F.R. 478.12(b);
- Allow for marking exceptions;
- Allow for markings for “Grandfathered” firearms.

The Final Rule does not:

- Require licensees to record acquisition of PMF’s received for adjustment or repair so long as they are returned to the person from whom received on the same day.

A&D Records

The Final Rule amends [§478.125](#)(i) and states:

Privately made firearms. Except for adjustment or repair of a firearm that is returned to the person from whom it was received on the same day, licensees must record each receipt or other acquisition (including from a personal collection) and disposition (including to a personal collection) of a privately made firearm as required by this part. For purposes of this paragraph, the terms “receipt” and “acquisition” shall include same-day or on-the-spot placement of identifying markings unless another licensee is placing the markings for, and under the direct supervision of, the licensee who recorded the acquisition. In that case, the licensee placing the markings need not record an acquisition from the supervising licensee or disposition upon return. The serial number need not be immediately recorded if the firearm is being identified by the licensee, or under the licensee’s direct supervision with the licensee’s serial number, in accordance with § 478.92(a)(2). Once the privately made firearm is so identified, the licensee shall update the record of acquisition entry with the serial number, including the license number prefix, and shall record its disposition in accordance with this section. In this part and part 447, where no manufacturer name has been identified on a privately made

firearm (if privately made in the United States), the words “privately made firearm” (or abbreviation “PMF”) shall be recorded as the name of the manufacturer.

PMF recordkeeping pursuant to §478.125(i) applies to:

- a) Licensed Importers – [478.122\(a\)](#)
- b) Licensed Manufacturers – [478.123\(a\)](#)
- c) Licensed Dealers – [478.125\(e\)](#)
- d) Personal Firearms Collection – [27 CFR 478.125a\(a\)\(4\)](#)

The Final Rule amends A&D recordkeeping requirements to require licensees to record “privately made firearm” or “PMF” in the absence of a manufacturer’s name in the “Description of firearm” section (formerly licensed manufacturer and/or licensed importer name).

As with all firearms, except in cases where a PMF is received by a FFL for adjustment or repair and returned to the person from whom it was received on the same day, licensees must record the acquisition of a PMF by the close of the next business day following receipt of the firearm. However, if a PMF is unmarked upon receipt by a licensee, the licensee may leave the serial number portion of the A&D record blank until the PMF is properly marked. However, the PMF must be marked within seven (7) days of receipt (or prior to disposition, whichever comes first) and once marked, the A&D record must be updated.

ATF Form 4473

The Final Rule amends [27 CFR 478.124](#) in part to require licensees to record “privately made firearm” or “PMF” on the ATF Form 4473 for over-the-counter transactions and, pursuant to 18 U.S.C. 922(c), for other than over-the counter transactions:

- (c)
 - (4) *The licensee shall identify the firearm to be transferred by listing on the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm. **Where no manufacturer name has been identified on a privately made firearm, the words “privately made firearm” (or abbreviation “PMF”) shall be recorded as the name of the manufacturer.***
 - (f) *Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, or licensed dealer by a transferee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction, who is not subject to the provisions of [§ 478.102\(a\)](#), and who is a resident of the State in which the licensee's business premises are located. The Form 4473 shall show the name, address, date and place of birth, height, weight, and race of the transferee; and the title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered. The transferee also must date and execute the sworn statement contained on the form showing, in case the firearm to be transferred is a firearm other than a shotgun or rifle, the transferee is 21 years or more of age; in case the firearm to be transferred is a shotgun or rifle, the transferee is 18 years or more of age; whether the transferee is a*

*citizen of the United States; the transferee's State of residence; the transferee is not prohibited by the provisions of the Act from shipping or transporting a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce; and the transferee's receipt of the firearm would not be in violation of any statute of the State or published ordinance applicable to the locality in which the transferee resides. The licensee shall identify the firearm to be transferred by listing in the Forms 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm to be transferred. **Where no manufacturer name has been identified on a privately made firearm, the words "privately made firearm" (or abbreviation "PMF") shall be recorded as the name of the manufacturer.** The licensee shall prior to shipment or delivery of the firearm to such transferee, forward by registered or certified mail (return receipt requested) a copy of the Form 4473 to the principal law enforcement officer named in the Form 4473 by the transferee, and shall delay shipment or delivery of the firearm to the transferee for a period of at least 7 days following receipt by the licensee of the return receipt evidencing delivery of the copy of the Form 4473 to such principal law enforcement officer, or the return of the copy of the Form 4473 to the licensee due to the refusal of such principal law enforcement officer to accept same in accordance with U.S. Postal Service regulations. The original Form 4473, and evidence of receipt or rejection of delivery of the copy of the Form 4473 sent to the principal law enforcement officer, shall be retained by the licensee as a part of the records required to be kept under this subpart.*

Marking Requirements: Manufacturers and Importers

New marking requirements under the Final Rule are intended to increase the success rate in the tracing of firearms used in criminal activities through licensees' records.

Prior to the Final Rule, licensed manufacturers and importers were required by Federal law to identify each firearm they manufactured or imported by placing a serial number on the frame or receiver in accordance with Federal Regulations under 27 CFR Parts 478 and 479 in the manner prescribed thereof. In addition to the serial number, Parts 478 and 479 required additional markings on either the frame, receiver, or the barrel (i.e. model – if designated, caliber or gauge, name as manufacturer or importer, city and State and the name and country of the foreign manufacturer when applicable).

Under the Final Rule, licensed manufacturers and importers are still required to identify each firearm manufactured or imported by placement of the serial number, name of licensee, and city and State of their place of business on the frame or receiver in accordance with the regulations. However, these markings may no longer be placed on the barrel or pistol slide. The model, caliber or gauge, foreign manufacturer, and country of manufacture may continue to be placed on the frame or receiver, or barrel, or pistol slide (if applicable).

Additionally, this new rule provides two options for marking the serial number, name, and place of business on the firearm frame or receiver: Specifically, a frame or receiver must have an individual serial number and one of the following:

1. Name of FFL (or recognized abbreviation) and City & State (or recognized abbreviations) where the FFL maintains their business OR
2. Name of FFL (or recognized abbreviation) and abbreviated FFL number (first three and last five digits with no dashes) as a serial number prefix, followed by a hyphen, then the assigned unique identification number (as stated in the amended regulation, 27 CFR 478.92(a)(1)(i)).

Please note that the serial number and any abbreviated license number (Option 2) must be marked in a print size no smaller than 1/16 inch (as stated in the amended regulation 27 CFR 478.92(a)(v)).

Marking Requirements for Multi-Piece Frames and Receivers

The final rule defines “*multi-piece frame or receiver*” at 27 C.F.R. 478.12 —

The term “multi-piece frame or receiver” shall mean a frame or receiver that may be disassembled into multiple modular subparts, i.e., standardized units that may be replaced or exchanged. The term shall not include the internal frame of a pistol that is a

complete removable chassis that provides housing for the energized component, unless the chassis itself may be disassembled. The modular subpart(s) identified in accordance with § 478.92 with an importer's or manufacturer's serial number shall be presumed, absent an official determination by the Director or other reliable evidence to the contrary, to be part of the frame or receiver of a weapon or device.

For multi-piece frames or receivers, the requirements regarding individual serial numbers may vary. For a multi-piece frame or receiver that has more than one outermost housing or holding structure that are similar (e.g., left and right halves), **all such parts** are required to be marked with the same serial number if sold together as a complete multi-piece frame or receiver. However, the new rule requires each outermost modular subpart of a frame or receiver be marked with a unique serial number when the modular subparts are disposed of separately. (27 C.F.R. 478.92(a)(iv)). This is to ensure that the frame or receiver of the resulting weapon has traceable marks of identification.

Specifically, multi-piece frames or receivers are to be identified and marked as follows:

- (1) the outermost housing or structure designed to house, hold, or contain the primary energized component of a handgun, breech blocking or sealing component of a projectile weapon other than a handgun, or internal sound reduction component of a firearm muffler or firearm silencer, as the case may be, is the subpart of a multi-piece frame or receiver that must be marked with the identifying information;
- (2) if more than one modular subpart is similarly designed to house, hold, or contain such primary component (e.g., left and right halves), each of those subparts must be identified with the same serial number not duplicated on any other frame or receiver; and
- (3) a marked modular sub-part of a multi-piece frame or receiver must be presumed, absent an official determination by the Director or other reliable evidence to the contrary, to be a part of the frame or receiver of a weapon.

Once a modular subpart of a multi-piece frame or receiver has been marked and then aggregated (assembled or unassembled) with the other frame or receiver subparts, the marked part cannot be removed and replaced unless:

- (A) the subpart replacement is not a firearm under 26 U.S.C. 5845;
- (B) the subpart replacement is identified by the licensed manufacturer of the original subpart with the same serial number in the manner prescribed by this section; **and**
- (C) the original subpart is destroyed under the firearm licensee's control or direct supervision prior to such placement.

This is because removing and replacing the identified component of a multi-piece frame or receiver would place the possessor in violation of 18 U.S.C. 922(k) and 27 CFR 478.34 (and if an NFA firearm, 26 U.S.C. 5861(g) and (h)), which prohibit the possession of any firearm with the manufacturer's or importer's serial number removed.

Marking Firearm Muffler or Silencer Parts and Transfers for Further Manufacturing or Repair

Under the Final Rule, manufacturers and makers of complete muffler or silencer devices only need to mark the part of the device that is designated the frame or receiver.

The new rule defines *Firearm muffler or silencer frame or receiver* at 27 C.F.R. 478.12(b) –

The terms “frame” and “receiver” shall mean, in the case of a firearm muffler or firearm silencer, the part of the firearm, such as an outer tube or modular piece, that provides housing or a structure for the primary internal component designed to reduce the sound of a projectile (i.e., baffles, baffling material, expansion chamber, or equivalent). In the case of a modular firearm muffler or firearm silencer device with more than one such part, the terms shall mean the principal housing attached to the weapon that expels a projectile, even if an adapter or other attachments are required to connect the part to the weapon. The terms shall not include a removable end cap of an outer tube or modular piece.

The end cap of a silencer cannot be a “frame” or “receiver.” In most cases, the “frame” or “receiver” would be the outer tube or the principal housing attached to the weapon. In the case of a multi-piece frame or receiver, if there are two or more similar subparts that make up a multi-piece frame or receiver then those subparts would be marked with the same serial number.

Minor components of silencers would not need to be engraved or registered when transferred between Special Occupational Taxpayers (SOTs). A subpart of a firearm muffler or silencer that is not a component part of a complete weapon at the time sold must be identified by an individual serial number. Therefore, any firearm muffler or silencer part transferred separately to an individual that is not a SOT must be marked and registered and transferred in accordance with the National Firearms Act (NFA).

Thus, there should be very few circumstances in which there is more than one unique serial number placed on a weapon (*e.g.*, remanufactured or imported firearm where the manufacturer or importer chooses to mark their own serial number rather than adopting an existing serial number).

The definition of “transfer” in Part 479 now excludes temporary conveyances solely for repair, identification, evaluation, research, testing, or calibration and return to the same lawful possessor.

With respect to parts defined as firearm mufflers or silencers, which are difficult to mark and record, the Final Rule allows them to be transferred between qualified licensees (SOT) for purposes of further manufacture or repair of complete devices without immediately marking and registering them in the National Firearms Registration and Transfer Record (“NFRTR”).

Time Limits for Marking Firearms (GCA vs NFA)

GCA firearms must be marked by manufacturers within seven (7) days after completion of the manufacturing process. NFA firearms must be marked by qualified manufacturers no later than close of the next business day after completion of the manufacturing process, or prior to disposition, whichever comes first.

Marking Exceptions

Under the Final Rule, licensees are allowed to adopt, and not required to mark the serial number or other identifying markings previously placed on a firearm, under the following conditions:

- a) When a firearm that has not been sold, shipped, or otherwise disposed of to a person other than a licensee and the serial number is not duplicated (*i.e.*, newly manufactured firearms).
- b) When a licensee remanufactures or imports a firearm that was sold, shipped, or disposed of to a nonlicensee the licensee identifies the firearm with their name and city and state; or their name, “FFL” followed by their abbreviated Federal firearms license number (*i.e.*, “FFL123456789”).
- c) When a manufacturer performs a service as a gunsmith (as defined in section 27 CFR 478.11) on an existing firearm that is for a non-licensee and not for sale or distribution.
- d) When a licensee adopts the serial number placed on a PMF by the unlicensed maker; however, the markings must meet the identification requirements, and the licensee must add their abbreviated FFL number as a prefix to the existing serial number.

Marking Grandfathered Provisions

The Final Rule allows manufacturers and importers to mark firearms (other than a PMF) of the same design in the same manner as before the effective date of the Final Rule (August 24, 2022). Almost all firearms, except as described below, that ATF classified prior to issuance of the Final Rule are grandfathered and may continue to be marked in the same manner as before the effective date of the Final Rule.

However, ATF classifications of partially complete, disassembled, or nonfunctional frames or receivers that determined the item or parts kit, was not, or did not include a “frame or receiver” are no longer valid or authoritative after the date of publication (April 26, 2022) of the new rule. ATF may not have been provided with a full and complete parts kit containing those items along with any templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that were made available to the purchaser or recipient of the item or kit. As explained in the

Final Rule, these items and materials are necessary for ATF and others to make a proper firearm classification under the GCA and NFA (if applicable). Thus, these items must be marked in accordance with the new requirements.

Recordkeeping & Retention Requirements

The Final Rule does:

- Amend the recordkeeping regulations for GCA (27 CFR 478.122, 123 and 125(e) and 125(i));
- Require all licensed manufacturers and importers to consolidate their records of manufacture, importation, acquisition, and disposition of firearms;
- Require ALL licensees to eliminate duplicate recordkeeping entries;
- Clarify that licensed dealers (including gunsmiths), manufacturers, and importers may conduct same day on the spot adjustments or repairs to firearms without recording them as an acquisition;
- Clarify the manufacturers' recordkeeping requirements for all non-NFA firearms;
- Clarify the manufacturers' recordkeeping requirements for all NFA firearms;
- Amend 27 CFR 478.129 so that ALL licensees MUST retain ALL required records (A&D Records and ATF Forms 4473) until the business or licensed activity is discontinued;
- Clarify 27 CFR 478.50(a) so that a warehouse may be used for storage of records over 20 years of age.

The final rule amends the following recordkeeping regulations:

GCA (27 CFR 478.122, 123 and 125(e) and 125(i)):

The final rule requires all licensed manufacturers and importers to consolidate their records of manufacture, importation, acquisition, and disposition of firearms.

The final rule requires ALL licensees to eliminate duplicate recordkeeping entries. In the event the licensee records a duplicate entry with the same firearm and acquisition information, whether to close out an old record book or for any other reason, the licensee shall record a reference to the date and location of the subsequent entry (*e.g.*, date of new entry, book name/number, page number, and line number) as the disposition.

The final rule clarifies that licensed dealers (including gunsmiths), manufacturers, and importers may conduct same day or on the spot adjustments or repairs to firearms without recording them as acquisitions or dispositions, provided they are returned to the person from whom they were received on the same day.

Recording information into the A&D record

Manufacturers must record acquisitions for non-NFA firearms manufactured or otherwise acquired within seven (7) days, or prior to disposition, whichever is sooner. In the event there is

more than one manufacturer or importer, country of manufacture, or serial number marked on a firearm, licensees MUST record all firearm markings in the A&D record.

Any FFL number either as a prefix, or if remanufactured or imported, separated by a semicolon, placed on a firearm, must be included in the serial number recorded in the A&D record.

All firearms acquired by an FFL, except for same day adjustments or repairs returned to the same person, must be recorded as an “acquisition,” in the A&D record. This includes firearms acquired for gunsmithing purposes and returned to the same person.

NFA:

Manufacturers MUST record NFA firearms manufactured or otherwise acquired into the A&D records by close of the next business day unless there is a sufficient commercial record of acquisition, in which case the grace period to record the acquisition would be extended until the seventh day.

Manufacturers may delay submission of an ATF Form 2, *Notice of Firearms Manufactured or Imported*, if firearm muffler or silencers parts are transferred between qualified licensees for further manufacture or to complete new devices that are registered upon completion of the device, or to repair existing, registered devices. (27 CFR 479.103)

FFL/SOT manufacturers may transfer a part defined as a firearm muffler or firearm silencer to another qualified FFL/SOT manufacturer without immediately identifying or registering such part, provided that it is for further manufacture (i.e., machining, coating, etc.) or manufacturing a complete muffler or silencer device. Once the new device with such part is completed, the manufacturer who completes the device shall identify, record, and register it in the manner and within the period specified in this part for a complete muffler or silencer device.

FFL/SOT manufacturers may transfer a replacement part defined as a firearm muffler or firearm silencer other than a frame or receiver to another FFL/SOT manufacturer or dealer without identifying or registering such part, provided that it is for repairing a complete muffler or silencer device that was previously identified, recorded, and registered in accordance with this part and part 479.

Record Retention (27 CFR 478.129):

The Final rule requires that ALL licensees MUST retain ALL required records (A&D Records and ATF Forms 4473) until the business or licensed activity is discontinued. A&D records must be kept either on paper or in an electronic alternate method approved by the Director, at the licensed business premises readily accessible for inspection.

The Final rule made changes to § 478.50(a) to make clear that a warehouse may be used for the storage of paper records over 20 years of age. The warehouse may not be used to conduct other business activities, which would require a separate license and fee. Any warehouse utilized for the storage of required paper records more than 20 years old is subject to inspection.

Rulings and Procedure Affected by Final Rule

The Final Rule does:

- Supersede Ruling 2009-1
- Supersede Ruling 2010-10
- Supersede Ruling 2009-5
- Supersede Ruling 2012-1
- Supersede Ruling 2013-3
- Supersede Ruling 2011-1
- Supersede Ruling 2016-3
- Amplified Ruling 2002-6
- Amplified Ruling 2016-1
- Amplified Ruling 2016-2
- Clarified Revenue Ruling 55-342
- Clarified Ruling 77-1
- Clarified Ruling 2009-2
- Clarified Ruling 2010-3
- Clarified Ruling 2015-1
- Clarified ATF Procedure 2020-1

ATF publishes formal rulings and procedures to promote uniform understanding and application of the laws and regulations it administers, and to provide uniform methods for performing operations in compliance with the requirements of the law and regulations. ATF Rulings represent ATF's guidance as to the application of the law and regulations to the entire state of facts involved and apply retroactively unless otherwise indicated. The following ATF Rulings and ATF Procedure are impacted by the final rule:

The following rulings are hereby SUPERSEDED:^{4[2]}

FFL Requirements (Type 01-Gunsmith v. Type 07-Manufacturer):

- 1) ATF Ruling 2009-1 (Firearms Manufacturing Activities—Camouflaging or Engraving Firearms); and
- 2) ATF Ruling 2010-10 (Manufacturing Operations May be Performed by Licensed Gunsmiths Under Certain Conditions)

⁴ The term "superseded" is used to describe a situation where the position set forth in a prior ruling is displaced and rendered ineffective by the new rule, which may incorporate the prior position or provide a substitute position. See *Humana Inc. v. Forsyth*, 525 U.S. 299, 307 (1999).

The new regulations provide a new definition of “gunsmith” which differentiates gunsmithing and manufacturing based on the purpose for which the activity is being performed. 27 CFR 478.11. The final purpose (*i.e.*, for purposes of sale or distribution) of the activities being performed determine whether a Type 01-Gunsmith License or a Type 07-Manufacturer License is required.

- 3) Ruling 2009-1 stated that any person who engages in the business of camouflaging or engraving firearms must be licensed as a dealer but does not need a license as a manufacturer regardless of the purpose for which the activity was performed.

Under the Final Rule if an activity is performed as a part of the production of new or remanufactured firearms for sale or distribution a manufacturer’s license is required.

- 4) Ruling 2010-10 stated that a Type 01-Gunsmith that performs activities on behalf of licensed manufacturers or importers need not obtain a Type 07-Manufacturer license under certain conditions.

These rulings are superseded under the Final Rule to the extent that those processes are performed on new or remanufactured firearms “for purposes of sale or distribution.” That is if the activity is performed as a part of the production of a new or remanufactured firearms for sale or distribution, then a Type 07-Manufacturer FFL is required.

Marking Requirements:

- 5) ATF Ruling 2009-5 (Firearms Manufacturing Activities, Identification Markings of Firearms)

A “non-marking variance request” or notice is no longer required under the new regulations under certain circumstances. The new regulations enumerate specific exceptions as to when and how a licensee may adopt markings:

- a) When a firearm that has not been sold, shipped, or otherwise disposed of to a person other than a licensee (*i.e.*, newly manufactured firearms). Under these circumstances, the licensee must adopt both the serial number **and** the other identifying markings provided the serial number adopted is not duplicated on any other firearm.
- b) When a licensee remanufactures or imports a firearm that was previously sold, shipped, or disposed of to a nonlicensee. Provided that the licensee legibly and conspicuously places, or causes to be placed, on the frame or receiver either: their name (or recognized abbreviation), and city and State (or recognized abbreviation) where they maintain their place of business; or their name (or recognized abbreviation) and abbreviated Federal firearms license

number, which is the first three and last five digits, individually (*i.e.*, not as a prefix to the serial number adopted) after the letters “FFL”, in the following format: “FFL12345678”. The serial number adopted or placed on the firearm generally may not be a duplicate.

- c) When a manufacturer performs a service for a nonlicensee as a gunsmith (as defined in section 27 CFR 478.11) on an existing firearm that is not for sale or distribution.

6) ATF Ruling 2012-1 (Time Period for Marking Firearms Manufactured)

The new regulations codify this ruling by requiring that all complete GCA firearms outside the purview of the NFA must be marked within seven (7) days after completion of the entire manufacturing process, or prior to disposition, whichever is sooner.

7) ATF Ruling 2013-3 (Adopting Identification of Firearms)

The new regulations codify this ruling by allowing licensed manufacturers and importers who remanufacture or import firearms to adopt an existing serial number, caliber/gauge, model, or other markings already identified on a firearm, provided they legibly and conspicuously place, or cause to be placed, on the frame or receiver, either:

- a) Name of FFL (or recognized abbreviation) and City & State (or recognized abbreviation) where the FFL maintains their business, OR
- b) Name of FFL (or recognized abbreviation) and their abbreviated FFL number (first three and last five digits with no dashes) individually, not as a prefix to the serial number adopted.

Recordkeeping Requirements:

8) ATF Ruling 2011-1 (Importers Consolidated Records)

The new regulations codify this ruling by requiring all licensed importers to consolidate their records of importation, acquisition, and disposition of firearms. Separate records are no longer required or allowed.

9) ATF Ruling 2016-3 (Consolidation of Records Required for Manufacturers)

The new regulations codify this ruling by requiring all licensed manufacturers to consolidate their records of manufacture, acquisition, and disposition of firearms. Separate records are no longer required or allowed.

The following rulings are hereby AMPLIFIED:⁵

- 1) ATF Ruling 2002-6 (Identification of Firearms, Armor Piercing Ammunition, and Large Capacity Ammunition Feeding Devices)

The new regulations amplify the meaning of the terms “conspicuously” and “legibly” to explain how they apply to the marking of frames or receivers, including multi-piece frames and receivers and modular silencer devices. The ruling still applies in all other respects.

- 2) ATF Ruling 2016-1 (Requirements to Keep Firearms Records Electronically)

The new regulations amplify this ruling to explain that acquisition and disposition records over 20 years of age may be maintained electronically and cannot be destroyed. The ruling still applies in all other respects.

- 3) ATF Ruling 2016-2 (Electronic ATF Form 4473)

The new regulations amplify this ruling to explain that ATF Forms 4473 over 20 years of age may be maintained electronically and cannot be destroyed. The ruling still applies in all other respects.

The following rulings and procedure are hereby CLARIFIED:⁶

- 1) Revenue Ruling 55-342 (FFLs Assembling Firearms from Component Parts)

The new regulations clarify that a gunsmith must obtain a manufacturer’s license when the activity is conducted on a firearm for purposes of sale or distribution.

- 2) ATF Ruling 77-1 (Gunsmithing at Shooting Events)

The new regulations clarify ATF Rul. 77-1 by explaining that licensed manufacturers and importers, who may engage in the business as a licensed dealer/gunsmith without

⁵ The term “amplified” is used to describe a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth in the new rule. Thus, if an earlier ruling held that a principle applied to (A), and the new rule holds that the same principle also applies to (B), the earlier ruling is amplified. *See* Rulings, ATF (Oct. 20, 2021), *available at* <https://www.atf.gov/rules-and-regulations/rulings>.

⁶ The term “clarified” is used to describe a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed. *See* Rulings, ATF (Oct. 20, 2021), *available at* <https://www.atf.gov/rules-and-regulations/rulings>.

obtaining a separate license, may also perform same-day adjustment or repair and return the firearm to the person from whom received without an acquisition record entry.

3) ATF Ruling 2009-2 (Installation of Drop in Replacement Parts)

This ruling stated that gunsmiths who engage in the business of installing “drop in” replacement parts must be licensed as dealers. The new regulations clarify this to the extent that licensed dealer/gunsmiths may install “drop in” replacement parts **to repair** their own firearms, or **to repair** firearms for other licensees who plan to resell them without being licensed as a manufacturer.

The new regulation also clarifies that a dealer/gunsmith may repair or customize customer owned firearms which includes using drop-in replacement parts.

4) ATF Ruling 2010-3 (Identification of Maxim Side-Plate Receivers)

The new regulations clarify that the classification of the right-side plate of Vicker/Maxim receiver is grandfathered and may continue to be marked on the right-side plate unless the receiver is re-designed.

5) ATF Ruling 2015-1 (Manufacturing and Gunsmithing)

The new regulations provide a new definition of “gunsmith”. The purpose for which the activity is being performed will determine what type of license is required (i.e., dealer/gunsmith or manufacturer). This rule further clarifies when a manufacturer’s license is required.

Dealer-gunsmiths must be licensed as manufacturers whenever they perform work that produces new or remanufactured firearms (weapons or frames or receivers) that are for sale or distribution.

6) ATF Procedure 2020-1 (Recordkeeping Procedure for Non-Over-the-Counter Firearm Sales by Licensees to Unlicensed In-State Residents That Are NICS Exempt)

The new regulations clarify that ATF Proc. 2020-1 is no longer an alternate method of complying with 27 CFR 478.124(f). The new regulation no longer requires that the firearm description information be completed after the licensee receives a completed ATF Form 4473 from the transferee. ATF Proc. 2020-1 must still be followed whenever non-over-the counter transactions are conducted in accordance with section 478.96(b).
