

distribution of C and distributes C pro rata to D's shareholders. By contract, C agrees to indemnify D for any imposition of tax under section 355(e) caused by the acts of C. The distribution is motivated by a desire to improve D's access to financing at preferred customer interest rates, which will be more readily available if D separates from C. At the time of the distribution, although D has not been approached by any potential acquirer of C, it is reasonably certain that within 6 months after the distribution either an acquisition of C will occur or there will be an agreement, understanding, arrangement, or substantial negotiations regarding an acquisition of C. Corporation Y acquires C in a merger described in section 368(a)(2)(E) within 6 months after the distribution. The C shareholders receive less than 50 percent of the stock of Y in the exchange.

(ii) No Safe Harbor applies to this acquisition.

(iii) The issue is whether the distribution of C and the acquisition of C by Y are part of a plan. To determine whether the distribution of C and the acquisition of C by Y are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) Under paragraph (d)(2) of this section, the following tends to show that the distribution of C and the acquisition of C by Y are part of a plan: The acquisition and the distribution occurred within 6 months of each other (paragraph (d)(2)(viii) of this section). In addition, the distribution may be motivated by a business purpose to facilitate the acquisition or a similar acquisition because there is evidence of a business purpose to facilitate an acquisition by reason of the fact that at the time of the distribution it was reasonably certain that an acquisition of C would occur or there would be an agreement, understanding, arrangement, or substantial negotiations regarding an acquisition of C within 6 months after the distribution (paragraphs (d)(2)(vii) and (e)(1)(i) of this section).

(v) Under paragraph (d)(3) of this section, the following tends to show that the distribution of C and the acquisition of C by Y are not part of a plan: Neither D, C, nor their respective controlling shareholders discussed the acquisition or a similar acquisition with Y or any other potential acquirers before the distribution (paragraph (d)(3)(i) of this section). Furthermore, D may be able to demonstrate that the distribution was motivated in whole or substantial part by a corporate business purpose other than a business purpose to facilitate the acquisition or a similar acquisition (paragraph (d)(3)(vi) of this section). D's stated purpose for the distribution (facilitating D's access to favorable financing) must be evaluated in light of the evidence of a business purpose to facilitate an acquisition. D also may be able to demonstrate that the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition (paragraph (d)(3)(vii) of this section).

(vi) Under paragraph (e)(5) of this section, the existence of the indemnity is irrelevant in analyzing whether the distribution and acquisition of C are part of a plan.

(vii) In determining whether the distribution of C and the acquisition of C by Y are part of a plan, one should consider the importance of D's stated business purpose for the distribution in light of the reasonable certainty that C would be acquired or there would be an agreement, understanding, arrangement, or substantial negotiations regarding an acquisition of C within 6 months after the distribution. If D's stated business purpose for the distribution is substantial even though the reasonable certainty that C would be acquired is evidence of a business purpose to facilitate an acquisition, and if D would have distributed C regardless of Y's acquisition of C, Y's acquisition of C and D's distribution of C are not part of a plan.

Example 6. Unexpected opportunity. (i) D, the stock of which is listed on an established market, announces that it will distribute all the stock of C pro rata to D's shareholders. At the time of the announcement, the distribution is motivated wholly by a corporate business purpose (within the meaning of § 1.355-2(b)) other than a business purpose to facilitate an acquisition. After the announcement but before the distribution, widely held X becomes available as an acquisition target. There were no discussions between D and X before the announcement. D negotiates with and acquires X before the distribution. After the acquisition, X's former shareholders own 55 percent of D's stock. D distributes the stock of C pro rata within 6 months after the acquisition of X.

(ii) No Safe Harbor applies to this acquisition.

(iii) The issue is whether the acquisition of X by D and the distribution of C are part of a plan. To determine whether the distribution of C and the acquisition of X by D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) Under paragraph (d)(2) of this section, the following tends to show that the acquisition of X by D and the distribution of C are part of a plan: The acquisition and the distribution occurred within 6 months of each other (paragraph (d)(2)(viii) of this section). Also, the distribution may be motivated by a business purpose to facilitate the acquisition or a similar acquisition because there is evidence of a business purpose to facilitate an acquisition by reason of the fact that the acquisition occurred after the public announcement of the planned distribution (paragraphs (d)(2)(vii) and (e)(1)(ii) of this section).

(v) Under paragraph (d)(3) of this section, D would assert that the following tends to show that the distribution of C and the acquisition of X by D are not part of a plan: The distribution was motivated by a corporate business purpose other than a business purpose to facilitate the acquisition or a similar acquisition (paragraph (d)(3)(vi) of this section), and the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition (paragraph (d)(3)(vii) of this section). That D decided to distribute C and announced that decision before it became aware of the opportunity to acquire X

suggests that the distribution would have occurred at approximately the same time and in similar form regardless of D's acquisition of X. X's lack of participation in the decision also helps establish that fact.

(vi) In determining whether the distribution of C and acquisition of X by D are part of a plan, one should consider the importance of D's business purpose for the distribution in light of D's opportunity to acquire X. If D can establish that the distribution continued to be motivated by the stated business purpose, and if D would have distributed C regardless of D's acquisition of X, then D's acquisition of X and D's distribution of C are not part of a plan.

Example 7. Multiple acquisitions.
[Reserved]

(n) *Effective date.* This section applies to distributions occurring August 3, 2001.

Approved: July 26, 2001.

Mark A. Weinberger,

Assistant Secretary of the Treasury.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01-19353 Filed 8-2-01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 178 and 179

[T.D. ATF-461; Ref: Notice No. 877]

RIN 1512-AB84

Identification Markings Placed on Firearms (98R-341P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the regulations to prescribe minimum height and depth requirements for identification markings placed on firearms by licensed importers and licensed manufacturers. Specifically, we are requiring a minimum height of 1¹/₁₆ inch and a minimum depth of .003 inch for serial numbers and a minimum depth of .003 inch for all other required markings. We believe that these minimum standards are necessary to ensure that firearms are properly identified in accordance with the law. In addition, the final regulations will facilitate our ability to trace firearms used in crime.

DATES: This rule is effective January 30, 2002.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division,

Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8210).

SUPPLEMENTARY INFORMATION:

I. Background

Section 923(i) of the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44), requires licensed importers and licensed manufacturers to identify, by means of a serial number, each firearm imported or manufactured. The serial number must be engraved, cast, or stamped on the receiver or frame of the weapon in such manner as the Secretary of the Treasury prescribes by regulation. With respect to certain firearms subject to the National Firearms Act (e.g., machine guns), 26 U.S.C. 5842 requires each manufacturer and importer and anyone making a firearm to identify each firearm by a serial number. The serial number may not be readily removed, obliterated, or altered. Section 5842 also requires the firearm to be identified by the name of the manufacturer, importer, or maker, and such other identification as the Secretary may prescribe by regulation.

Regulations that implement section 923(i) are set forth in 27 CFR 178.92. In general, this section requires each licensed manufacturer or licensed importer of firearms to legibly identify each firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing on the frame or receiver an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed.

Section 178.92 also requires licensed importers and licensed manufacturers to conspicuously place the following identification markings on the frame, receiver, or barrel of each firearm imported or manufactured in a manner not susceptible of being readily obliterated, altered, or removed:

1. The model, if such designation has been made;
2. The caliber or gauge;
3. The name (or recognized abbreviation of same) of the manufacturer and also, when applicable, of the importer;
4. In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where the licensed manufacturer maintains its place of business; and
5. In the case of an imported firearm, the name of the country in which manufactured and the city and State (or recognized abbreviation thereof) where the importer maintains its place of business.

The same marking requirements appear in regulations issued under the National Firearms Act at 27 CFR 179.102.

In the case of any semiautomatic assault weapon manufactured after September 13, 1994, the regulations also require that the frame or receiver be marked "RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY" or, in the case of weapons manufactured for export, "FOR EXPORT ONLY" (27 CFR 178.92(a)(2)).

II. Discussion

The GCA requires Federal firearms licensees (FFLs) to maintain records of their acquisitions and dispositions of firearms, including complete and accurate descriptions of the firearms. One of the principal objectives of the GCA is to facilitate the tracing of firearms used in crime "to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence * * *." Gun Control Act of 1968, § 101, 82 Stat. 1213. To accomplish this objective, section 178.92 requires that each manufacturer or importer utilize an individual serial number for each firearm manufactured or imported and prohibits the duplication of any serial number placed by the manufacturer or importer on any other firearm. Furthermore, section 922(k) of the GCA makes it unlawful for any person to transport, ship, possess, or receive, in interstate or foreign commerce, any firearm that has had the importer's or manufacturer's serial number removed, obliterated, or altered.

The serial number, along with other required markings such as caliber, model, name of manufacturer, and city and State of the manufacturer or importer make any given firearm uniquely identifiable and traceable. Firearms tracing is an integral part of any investigation involving the criminal use of firearms. The systematic tracking of firearms from the manufacturer or U.S. importer to the first retail purchaser enables law enforcement agencies to identify suspects involved in criminal violations, determine if the firearm is stolen, and provide other information relevant to an investigation. Our National Tracing Center (NTC) maintains the capability to trace recovered firearms used in crimes. Over the years, the NTC has experienced a substantial increase in the number of requests received for crime gun traces by Federal, State, and local law enforcement agencies. The total number of requests for gun traces increased from 77,000 in 1995 to approximately 200,000 in 1997.

Prior to this rulemaking proceeding, there were no minimum standards concerning size and depth of impression for markings on firearms. The regulations required that the identifying information, including the serial number, be legible, conspicuous, and placed on the firearm "in a manner not susceptible of being readily obliterated, altered, or removed." The lack of specific minimum standards has caused problems for licensees in properly recording identifying information in their required records, particularly with respect to serial numbers that are very small or are not applied to a uniform depth. Moreover, worn, hard-to-read markings often result in State and local law enforcement officers forwarding erroneous information to ATF in connection with a trace request. Serial numbers that are stamped very lightly on the frame or receiver of the firearm are more susceptible to being easily obliterated, altered, or removed. These problems often hinder our efforts to trace a particular firearm. The Johns Hopkins Center for Gun Policy and Research provided us with the following information:

We have been informed by the Baltimore Police Department that of the almost 3,700 crime-guns recovered by them in 1998, 15% had obliterated serial numbers. Nationwide it is estimated that between 9 and 20 percent of the crime-guns recovered have had their serial numbers removed.

III. Notice of Proposed Rulemaking

To reduce the problem of incorrect record entries by licensees and to make identification markings less susceptible to being readily obliterated, altered, or removed, on June 23, 1999, we published a notice in the **Federal Register** proposing to amend the regulations to prescribe minimum height and depth requirements for identification markings placed on firearms (Notice No. 877, 64 FR 33450). Specifically, we proposed that licensed manufacturers and licensed importers cast, stamp (impress) or engrave serial numbers to a depth of at least .005 inch and in a print size no smaller than $\frac{3}{32}$ inch. We also proposed that all other required markings, including the special markings for semiautomatic assault weapons, be cast, stamped (impressed) or engraved to a depth of at least .005 inch. We did not propose to require a minimum height requirement of $\frac{3}{32}$ inch for all identification markings since such a requirement would make it difficult to fit all the information on a firearm, particularly in the case of handguns.

As stated in the notice, we believed that the minimum standards proposed

would ensure that firearms are properly identified in accordance with the law. In addition, we stated that the proposed regulations, if adopted, would facilitate our ability to trace firearms used in crime. The comment period for Notice No. 877 closed on September 21, 1999.

IV. Analysis of Comments/Final Rule

We received 18 comments in response to Notice No. 877. Comments were submitted by a Federal agency (Department of the Treasury—U.S. Customs Service), Federal firearms licensees, the Canadian Firearms Registry, Johns Hopkins University (School of Hygiene and Public Health—Center for Gun Policy and Research), and two organizations (the International Association of Chiefs of Police and the Sporting Arms and Ammunition Manufacturers' Institute).

A. Minimum Depth for Serial Numbers and All Other Required Markings

Fourteen comments addressed our proposal to require a minimum depth of .005 inch for all required identification markings placed on firearms, including serial numbers. Three commenters, all Federal firearms licensees, supported the proposed regulation. One of the commenters stated that it currently impresses the required information to a depth of .005 inch. Another commenter, a manufacturer and importer of rifles and pistols for the civilian and law enforcement markets, stated that it currently engraves serial numbers and other information on pistols to a depth of at least .005 inch.

Eleven comments expressed opposition to our proposal. Most commenters maintained that they can mark firearms to a depth of approximately .003 inch using their present equipment. However, in order to comply with the minimum .005 inch depth proposed by ATF, they would need to purchase new equipment at great expense. In its comment, the Sporting Arms and Ammunition Manufacturers' Institute (SAAMI), an organization that represents the majority of the major firearms manufacturers, explained that its member companies place required identification markings on firearms by rolling, electro/chemical etch, multiple pin impingement or laser etch. SAAMI elaborated on the industry's concerns regarding compliance with the proposed regulation as follows:

Most [member companies] roll the serial numbers and other information on to the gun. This method requires high forces to get the impressions deep enough. It requires $\frac{3}{4}$ ton per $\frac{3}{32}$ -inch (.094) character to go 0.005 inches deep in mild steel and 1 ton in

medium steel. Some companies do not now, and cannot go 0.005 inches deep with their current equipment. Should pressure be increased to obtain 0.005, unsafe deformation of the barrel and receiver can occur. Some companies use only laser etching to burn the required information into the firearm. This method does not lend itself to deep markings, * * * Laser capabilities vary in their ability to etch to 0.005 inch. Most company's laser engraving equipment cannot meet the proposed BATF depth requirement.

Some commenters provided ATF with cost estimates that would be incurred to comply with the proposed regulation. For example, Thompson/Center Arms Company, Inc. (TC), a licensed manufacturer of sporting firearms, states that it currently presses serial numbers and other required information on firearms to a depth of .003 inch using a 4000 pound press. The commenter contends that adoption of the proposed rule would require it to incur the following costs:

Compliance with the proposed rule would cost T/C \$100,000 in start up costs. T/C would have to purchase a 10 ton press costing \$10,000 and a serial stamp costing \$8000. Engineering costs to change the process for new tooling would be \$35,000. Costs to change the finishing process would be \$20,000. Additional costs would be necessary for new inspection tools to verify the depth and for other tooling. Further, compliance with the proposed rule would cost T/C an additional \$50,000 annually. More finishing will be required if the numbers must be pressed as deep as proposed. Deeper pressing raises more excess metal around the numbers, requiring more finishing and increasing the rate of rejected receivers. At an estimated 20,000 receivers produced each year, the annual cost in reworking firearms will total \$30,000. Additional inspection costs would be incurred. The serial stamp (which costs \$8000) will receive more friction and wear and will require replacement more frequently.

Another comment, submitted on behalf of Browning and U.S. Repeating Arms Company, stated that, in general, neither company currently meets the minimum height or depth requirements proposed in the notice. As stated in the comment—

[T]o impose these minimum standards would unduly burden both companies economically. Conservative estimates set costs well in excess of \$100,000 for replacement tooling and obsolescence of spare components. Further, it is most probably the case that we would be unable to meet the requirements with our laser etching facilities and would incur substantial additional costs associated with reconfiguring that operation.

Based on the comments received in response to Notice No. 877, we have reconsidered our proposal to require a

minimum depth of .005 inch for all required markings placed on firearms, including serial numbers. The comments clearly demonstrate that adoption of such a proposal would place an undue financial hardship on the industry. We agree with SAAMI's comment that a minimum depth requirement for identification markings should be prescribed "to a standard that will meet marking objectives but will not create either safety problems or cause significant process and equipment changes for the manufacturer." As mentioned, most commenters maintain that they can mark firearms to a depth of approximately .003 inch using their present equipment. SAAMI also acknowledged that most of its member manufacturers could meet a .003 inch depth requirement. Accordingly, this final rule prescribes a minimum depth of .003 inch for all required identification markings placed on firearms, including serial numbers. The depth of all markings, including serial numbers, will be measured from the flat surface of the metal, not the peaks or ridges. We believe that this standard is the minimum necessary to ensure that firearms are properly identified in accordance with the law while at the same time imposing a reasonable burden on the industry.

B. Minimum Height for Serial Numbers

Eleven comments addressed our proposed minimum height requirement of $\frac{3}{32}$ inch for serial numbers placed on firearms. Three commenters, all licensed manufacturers, supported the proposal noting that they currently mark serial numbers to that depth.

One commenter, the Canadian Firearms Registry (a national police service of the Royal Canadian Mounted Police), agreed with ATF's decision to establish a minimum height requirement for serial numbers. However, the commenter expressed a concern about the size proposed by ATF stating that while $\frac{3}{32}$ inch is legible, "such small lettering may increase the number of clerical errors in serial numbers use for commercial transactions, in addition to law enforcement issues."

Seven commenters objected to the proposed minimum $\frac{3}{32}$ inch height requirement. Most commenters stated that they could not comply with the proposed type size using their current equipment and that compliance with ATF's proposed rule would require them to purchase new equipment at considerable expense. Some commenters provided us with cost estimates that would be incurred to comply with the proposed regulation.

Several commenters requested that ATF change the minimum height for serial numbers to $\frac{1}{16}$ inch. One commenter, a small business FFL, stated the following:

Small businesses often rely on common 'off the shelf' tools and supplies. The proposed $\frac{3}{32}$ of an inch is not a common size for number and letter stamps for metal working where as $\frac{1}{16}$ of an inch is. To change sizes would require replacing existing tooling and acquiring new tooling which cost at a minimum 20 times the amount of the standard sizes. This cost is based on current machine tool catalogs. This is a significant cost to small businesses * * *

Another commenter, Colt's Manufacturing Company, Inc., explained that "[t]he dot matrix and roll mark processes currently in use at Colt's could reliably meet such [$\frac{1}{16}$ inch] marking requirements." In its comment, SAAMI stated that most of its member manufacturers could meet a $\frac{1}{16}$ height requirement for serial numbers.

Accordingly, based on the comments received in response to the notice, this final rule establishes a minimum height of $\frac{1}{16}$ inch for serial number markings placed on firearms. We believe that this minimum size type will reduce the problem of incorrect record entries of serial numbers by licensees and will facilitate our ability to trace firearms used in crime. The height of serial numbers will be measured the same way that stamps are measured, *i.e.*, the distance between the latitudinal ends of the working (contact) surface of the stamp face/font. Consequently, serial number height will be measured as the distance between the latitudinal ends of the character impression bottoms (bases).

C. Miscellaneous

The Johns Hopkins Center for Gun Policy and Research (the Center) expressed support for ATF's efforts to establish minimum depth requirements for serial numbers placed on firearms. However, it is their opinion that compression stamping should be the only method acceptable for the application of serial numbers. While the regulations provide that engraving (etching), casting, and stamping (impressing) are acceptable methods of marking firearms, the commenter believes that the casting and etching methods fail to meet the criterion set forth in the regulations, *i.e.*, that the identifying information placed on firearms be "in a manner not susceptible of being readily obliterated, altered, or removed." Similar concerns were raised by another commenter, the International Association of Chiefs of Police (IACP). The IACP contends that laser-etched

serial numbers can be obliterated much easier than stamped ones and, as such, hinder law enforcement efforts to trace the origin of firearms used in crime. The GCA provides that the serial number must be engraved, cast, or stamped on the receiver or frame of a firearm. Laser etching is considered to be an engraving operation. As defined in *The American Heritage Dictionary of the English Language* (Houghton Mifflin Company, Boston, 1976), the word "engrave" means "[t]o carve, cut, or etch (a design or letters) into a material." As such, to prohibit the use of casting and etching methods for marking firearms, legislative action would be necessary.

With respect to the Center's contention that casting or etching methods "fail to meet the criterion of 'not susceptible to being readily obliterated,'" we would emphasize that all markings can be removed by someone who wishes to make a deliberate effort to remove the markings. Realistically, we need to be concerned about markings that could be worn away during normal use or markings that could not survive normal refinishing processes, *e.g.*, blueing, plating, etc. In addition, susceptibility of being readily obliterated, altered, or removed depends on a number of factors, including the method of marking, the size and depth of marking, and the material. For example, we have seen stamped markings that were so lightly placed on the metal that they could be scratched away with a pen knife. Although the markings were stamped, they could still be readily obliterated and were not in compliance with the regulations. On the other hand, some manufacturers use cast markings that can be deeply placed in the metal and would require considerable effort to remove. Also, markings placed in soft materials such as aluminum or zinc alloys, and especially plastics, are comparatively easy to remove compared to markings in steel. As such, ATF has required manufacturers and importers who use polymer plastic frames to mark serial numbers in a steel plate embedded within the plastic.

The U.S. Customs Service, a federal agency within the Department of the Treasury, also submitted a comment on ATF's proposed regulations. This agency enforces general country of origin marking requirements for foreign articles imported into the United States, pursuant to 19 U.S.C. 1304. Customs is concerned about the type size of the country of origin marking for imported firearms. While ATF's proposed regulations do not prescribe minimum print size requirements for the additional information placed on

firearms, including the country of origin marking for imported firearms, Customs notes that regulations addressing country of origin marking are set forth in 19 CFR part 134. Those regulations require the marking to be "conspicuous," which is defined as "capable of being easily seen with normal handling of the article." Customs also advised ATF of additional regulations in 19 CFR 134.46 concerning country of origin marking. Accordingly, these final regulations make a cross reference to Customs' country of origin marking requirements in 19 CFR part 134.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this final rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. We hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities because the revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Accordingly, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control numbers 1512-0550. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collections of information in this final rule are in 27 CFR 178.92 and

179.102. This information is required to properly identify each firearm that is manufactured or imported. The collections of information are mandatory. The likely respondents are businesses.

Estimated total annual reporting and/or recordkeeping burden: 5,012 hours.

Estimated average burden hours per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 2,506.

Estimated annual frequency of responses: one-time requirement to change size and depth.

Estimated average annual burden hours per respondent: 1512–0129—.171 hours; 1512–0130—.12 hours; and 1512–0387—3 hours.

Comments concerning the accuracy of these burden estimates and suggestions for reducing the burden should be directed to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

Disclosure

Copies of the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR Parts 178 and 179 as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for 27 CFR part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 2. Section 178.92 is amended by revising the section heading and paragraph (a), and by adding a parenthetical text at the end of the section to read as follows:

§ 178.92 How must licensed manufacturers and licensed importers identify firearms, armor piercing ammunition, and large capacity ammunition feeding devices?

(a)(1) *Firearms.* You, as a licensed manufacturer or licensed importer of firearms, must legibly identify each firearm manufactured or imported as follows:

(i) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and must not duplicate any serial number placed by you on any other firearm. For firearms manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .003 inch and in a print size no smaller than $\frac{1}{16}$ inch; and

(ii) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered, or removed. For firearms manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of this information must be to a minimum depth of .003 inch. The additional information includes:

(A) The model, if such designation has been made;

(B) The caliber or gauge;

(C) Your name (or recognized abbreviation) and also, when applicable, the name of the foreign manufacturer;

(D) In the case of a domestically made firearm, the city and State (or

recognized abbreviation thereof) where you as the manufacturer maintain your place of business; and

(E) In the case of an imported firearm, the name of the country in which it was manufactured and the city and State (or recognized abbreviation thereof) where you as the importer maintain your place of business. For additional requirements relating to imported firearms, see Customs regulations at 19 CFR part 134.

(2) *Firearm frames or receivers.* A firearm frame or receiver that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(3) *Special markings for semiautomatic assault weapons, effective July 5, 1995.* In the case of any semiautomatic assault weapon manufactured after September 13, 1994, you must mark the frame or receiver “RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY” or, in the case of weapons manufactured for export, “FOR EXPORT ONLY,” in a manner not susceptible of being readily obliterated, altered, or removed. For weapons manufactured or imported on and after January 30, 2002, the engraving, casting, or stamping (impressing) of the special markings prescribed in this paragraph (a)(3) must be to a minimum depth of .003 inch.

(4) *Exceptions.* (i) *Alternate means of identification.* The Director may authorize other means of identification upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(ii) *Destructive devices.* In the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of a letter application from you, submitted in duplicate, showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable.

(iii) *Machine guns, silencers, and parts.* Any part defined as a machine gun, firearm muffler, or firearm silencer in § 178.11, that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you, must be identified as required by this section. The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(5) *Measurement of height and depth of markings.* The depth of all markings required by this section will be measured from the flat surface of the metal and not the peaks or ridges. The height of serial numbers required by paragraph (a)(1)(i) of this section will be measured as the distance between the latitudinal ends of the character impression bottoms (bases).

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0550)

PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Par. 3. The authority citation for 27 CFR Part 179 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 179.102 is revised to read as follows:

§ 179.102 How must firearms be identified?

(a) You, as a manufacturer, importer, or maker of a firearm, must legibly identify the firearm as follows:

(1) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and must not duplicate any serial number placed by you on any other firearm. For firearms manufactured, imported, or made on and after January 30, 2002, the engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .003 inch and in a print size no smaller than 1/16 inch; and

(2) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed), or placed on the frame, receiver, or barrel thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered or removed. For firearms manufactured, imported, or made on and after January 30, 2002, the engraving, casting, or stamping (impressing) of this information must be to a minimum depth of .003 inch. The additional information includes:

- (i) The model, if such designation has been made;
- (ii) The caliber or gauge;
- (iii) Your name (or recognized abbreviation) and also, when applicable,

the name of the foreign manufacturer or maker;

(iv) In the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) where you as the manufacturer maintain your place of business, or where you, as the maker, made the firearm; and

(v) In the case of an imported firearm, the name of the country in which it was manufactured and the city and State (or recognized abbreviation thereof) where you as the importer maintain your place of business. For additional requirements relating to imported firearms, see Customs regulations at 19 CFR part 134.

(b) The depth of all markings required by this section will be measured from the flat surface of the metal and not the peaks or ridges. The height of serial numbers required by paragraph (a)(1) of this section will be measured as the distance between the latitudinal ends of the character impression bottoms (bases).

(c) The Director may authorize other means of identification upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(d) In the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of a letter application from you, submitted in duplicate, showing that engraving, casting, or stamping (impressing) such a weapon would be dangerous or impracticable.

(e) A firearm frame or receiver that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(f)(1) Any part defined as a machine gun, muffler, or silencer for the purposes of this part that is not a component part of a complete firearm at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section.

(2) The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application from you, submitted in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(Approved by the Office of Management and Budget under control number 1512-0550)

Signed: December 15, 2000.

Bradley A. Buckles,
Director.

Approved: January 8, 2001.

Timothy E. Skud,
Deputy Assistant Secretary (Acting),
(Regulatory, Tariff and Trade Enforcement).

Editorial note: This document was received at the Office of the Federal Register July 31, 2001.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720-AA66

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Eligibility and Payment Procedures for CHAMPUS Beneficiaries Age 65 and Over

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements Section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Section 712 extends TRICARE eligibility to persons age 65 and over who would otherwise have lost their TRICARE eligibility due to attainment of entitlement to hospital insurance benefits under Part A of Medicare. In order for these individuals to retain their TRICARE eligibility, they must be enrolled in the supplementary medical insurance program under Part B of Medicare. In general, in the case of medical or dental care provided to these individuals for which payment may be made under both Medicare and TRICARE, Medicare is the primary payer and TRICARE will normally pay the actual out-of-pocket costs incurred by the person. This rule prescribes TRICARE payment procedures and makes revisions to TRICARE rules to accommodate Medicare-eligible CHAMPUS beneficiaries. The Department is publishing this rule as an interim final rule in order to meet the statutorily required effective date. Public comments, however, are invited and will be considered when the rule is published as a final rule.

DATES: This rule is effective October 1, 2001. Written comments will be accepted until October 2, 2001.

ADDRESSES: Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management