

State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

#### **Executive Order 12372 (Intergovernmental Review)**

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

#### **Paperwork Reduction Act**

This final rule does not create any new information collection requirements for which submission to the Office of Management and Budget would be needed under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **National Environmental Policy Act**

The FHWA has analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

#### **Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this final rule under Executive Order 13175. The FHWA concluded that the final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government; and will not preempt tribal law. There are no requirements set forth in the final rule that directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

#### **Executive Order 12988 (Civil Justice Reform)**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Executive Order 13045 (Protection of Children)**

Under Executive Order 13045 this final rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

This final rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630.

#### **Executive Order 13211 (Energy Effects)**

This final rule has been analyzed under Executive Order 13211. The FHWA has determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RINs contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### **List of Subjects in 23 CFR Part 669**

Excise taxes, Grant programs—transportation, Highways and roads, Motor vehicles.

Issued on: May 13, 2016.

**Gregory G. Nadeau,**  
*Administrator, Federal Highway Administration.*

In consideration of the foregoing, 23 CFR part 669 is amended as set forth below.

#### **PART 669—ENFORCEMENT OF HEAVY VEHICLE USE TAX**

- 1. Revise the authority citation for part 699 to read as follows:

**Authority:** 23 U.S.C. 141(c) and 315; 49 CFR 1.85.

- 2. Revise § 669.13 to read as follows:

##### **§ 669.13 Effect of failure to certify or to adequately obtain proof-of-payment.**

If a State fails to certify as required by this regulation or if the Secretary of Transportation determines that a State is not adequately obtaining proof-of-payment of the heavy vehicle use tax as a condition of registration notwithstanding the State's certification, Federal-aid highway funds apportioned to the State under 23 U.S.C. 104(b)(1) for the next fiscal year shall be reduced in an amount up to 8 percent as determined by the Secretary.

- 3. Amend § 669.19 by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

##### **§ 669.19 Reservation and reapportionment of funds.**

(a) The Administrator may reserve from obligation up to 8 percent of a State's apportionment of funds under 23

U.S.C. 104(b)(1), pending a final determination.

(b) Funds withheld pursuant to a final administrative determination under this regulation shall be reapportioned to all other eligible States pursuant to the formulas of 23 U.S.C. 104(b)(1) and the apportionment factors in effect at the time of the original apportionments, unless the Secretary determines, on the basis of information submitted by the State, that the state has come into conformity with this regulation prior to the final determination. \* \* \*

\* \* \* \* \*

[FR Doc. 2016–11961 Filed 5–20–16; 8:45 am]

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#### **DEPARTMENT OF JUSTICE**

#### **Bureau of Alcohol, Tobacco, Firearms, and Explosives**

#### **27 CFR Part 478**

[Docket No. ATF 2008R–15P; AG Order No. 3670–2016]

**RIN 1140–AA38**

#### **Federal Firearms License Proceedings—Hearings**

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is amending the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regarding administrative hearings held as part of firearms license proceedings. This rule clarifies that persons requesting a hearing will be afforded the opportunity to submit facts and arguments for review and consideration during the hearing, and may make offers of settlement before or after the hearing. The regulations are intended to ensure that Federal firearms licensees and persons applying for a Federal firearms license are familiar with the hearing process relative to the denial, suspension, or revocation of a firearms license, or imposition of a civil fine.

**DATES:** This rule is effective July 22, 2016.

**FOR FURTHER INFORMATION CONTACT:** Shermaine Kenner, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648–7070.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Attorney General is responsible for enforcing the Gun Control Act of 1968 (the Act), 18 U.S.C. Chapter 44. She has delegated that responsibility to the Director of ATF (Director), subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130(a). ATF has promulgated regulations that implement the Act in 27 CFR part 478.

The regulations in subpart E of part 478, §§ 478.71–478.78, relate to proceedings involving Federal firearms licenses, including the denial, suspension, or revocation of a license, or the imposition of a civil fine. In particular, § 478.71 provides that the Director may issue a notice of denial, ATF Form 4498, to an applicant for a license if he has reason to believe that the applicant is not qualified, under the provisions of § 478.47, to receive a license. The notice sets forth the matters of fact and law relied upon in determining that the application should be denied, and affords the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If a request for a hearing is not filed within such time, the application is disapproved and a copy, so marked, is returned to the applicant.

Under § 478.72, an applicant who has been denied an original or renewal license may file a request with the Director of Industry Operations for a hearing to review the denial of the application. On conclusion of the hearing and after consideration of all relevant facts and circumstances presented by the applicant or his representative, the Director renders a decision confirming or reversing the denial of the application. If the decision is that the denial should stand, a certified copy of the Director's findings and conclusions is furnished to the applicant with a final notice of denial, ATF Form 5300.13.<sup>1</sup> In addition, a copy of the application, marked "Disapproved," is returned to the applicant. If the decision is that the license applied for should be issued, the applicant is so notified, in writing, and the license is issued.

Section 478.73 provides that whenever the Director has reason to believe that a firearms licensee has willfully violated any provision of the Act or part 478, a notice of revocation of the license, ATF Form 4500, may be issued. In addition, a notice of revocation, suspension, or imposition of a civil fine may be issued on ATF Form

4500 whenever the Director has reason to believe that a licensee has knowingly transferred a firearm to an unlicensed person and knowingly failed to comply with the requirements of 18 U.S.C. 922(t)(1) (relating to a National Instant Criminal Background Check System (NICS) background check) with respect to the transfer and, at the time that the transferee most recently proposed the transfer, the NICS was operating and information was available to the system demonstrating that the transferee's receipt of a firearm would violate 18 U.S.C. 922(g) or 922(n) or State law. Additionally a notice of suspension or revocation of a license, or the imposition of a civil penalty, may be issued whenever the Director has reason to believe that a licensee has violated § 922(z)(1) by selling, delivering, or transferring any handgun to any person other than a licensee unless the transferee was provided with a secure gun storage or safety device for that handgun.

As specified in 27 CFR 478.74, a licensee who has received a notice of license suspension or revocation of a license, or imposition of a civil fine, may, within 15 days of receipt, file a request for a hearing with the Director of Industry Operations. On conclusion of the hearing and after consideration of all the relevant presentations made at the hearing, the Director renders a decision and prepares a brief summary of the findings and conclusions on which the decision is based. If the decision is that the license should be revoked or, in actions under 18 U.S.C. 922(t)(5) or 924(p)(1), that the license should be revoked or suspended, or that a civil fine should be imposed, a certified copy of the summary is furnished to the licensee with the final notice of revocation, suspension, or imposition of a civil fine on ATF Form 5300.13. If the decision is that the license should not be revoked, or in actions under §§ 922(t)(5) or 924(p)(1), that the license should not be revoked or suspended, and a civil fine should not be imposed, the licensee is notified in writing.

Under 27 CFR 478.76, a firearms licensee or an applicant for a firearms license may be represented at a hearing by an attorney, certified public accountant, or other person recognized to practice before ATF, provided certain requirements are met. The Director may be represented in hearing proceedings by an authorized attorney in the Office of Chief Counsel. Pursuant to § 478.77, hearings concerning license denials, suspensions, or revocations, or the imposition of a civil fine, must be held

in a location convenient to the aggrieved party.

In addition, ATF has published in the **Federal Register** its procedures regarding administrative hearings held as part of firearms license proceedings. See ATF 36N, 75 FR 48362, Aug. 10, 2010.

## II. Proposed Rule—Clarification of Hearing Proceedings

On February 3, 2012, ATF published in the **Federal Register** a notice of proposed rulemaking (NPRM) amending the regulations in subpart E of part 478, sections 478.71–478.78 (Notice No. 32P, 77 FR 5460). The proposed regulations were intended to ensure that Federal firearms licensees and applicants for a Federal firearms license are familiar with the hearing process relative to the denial, suspension, or revocation of a firearms license, or imposition of a civil fine.

Specifically, the NPRM proposed to add language stating that a hearing would be informal and that a licensee or applicant would have the opportunity to submit facts, arguments, offers of settlement, or proposals of adjustment for review and consideration as part of the hearing process. While the opportunity for a licensee or applicant to submit additional material for review and consideration has always been afforded to such parties since the enactment of the Act, this clarification of the regulations was intended to ensure that all parties involved in firearms license administrative hearings are fully aware of these opportunities.

The comment period for Notice No. 32P closed on May 3, 2012.

## III. Summary of Comments

All public comments were considered in preparing this final rule. In response to Notice No. 32P, ATF received ten comments. Five of the commenters agreed with the proposed rule. Commenters who agreed with the proposed rule primarily did so because they believed that implementation of the rule would clarify the opportunities available to an applicant or licensee requesting a hearing in response to a notice of the denial, revocation, or suspension of a firearms license, or imposition of a civil fine. Commenters who disagreed with the proposed rule did so for a variety of reasons, with the most common objection relating to the proposed addition of the term "informal" as applied to firearms license administrative hearings.

<sup>1</sup> ATF Form 5300.13 was previously referred to as ATF Form 4501.

### *General Comments on the Proposed Rule*

One commenter stated that the proposed rule should better clarify what conduct can lead to a revocation, denial, or suspension of a Federal firearms license so that a person applying for a license can be on notice of the possibilities before taking the steps to get the license. Existing regulations in part 478, however, already specify which actions and violations by a licensee or applicant may lead to a license denial, revocation, or suspension, or imposition of a civil fine. Therefore, clarification of this matter is not needed.

One commenter stated, “[i]n order to ensure that Federal firearms licensees and applicants for a Federal firearms license are familiar with the hearing process relative to the denial, suspension, or revocation of a firearms license, or imposition of a civil fine, the information regarding the process and procedures for the denial hearing should be included in the Director of Industry Operation’s report that is sent to the applicant or licensee.” ATF already follows this practice: The notice of denial, revocation, suspension, or imposition of a civil fine includes information concerning specific procedures on how to request a hearing, a citation to the applicable regulations, and a pamphlet on the hearing process. In addition, information regarding the hearing process as well as what is required from an applicant or licensee can be found in §§ 478.72 and 478.74, and the hearing procedures were published by ATF in the **Federal Register** on August 10, 2010 (ATF 36N, 75 FR 48362). Accordingly, there is no need to change the language of this regulation to address the commenter’s concern.

One commenter argued that this proposed rule will likely cause crime to rise by making it more difficult for law-abiding citizens to have access to firearms. The same commenter stated that penalties for violations where the Director has reason to believe that a licensee has knowingly transferred a firearm to an unlicensed person and knowingly failed to comply with the requirements of 18 U.S.C. 922(t)(1) should be strengthened. Regarding the commenter’s first assertion, this rule will not have any negative effect on the ability of law-abiding citizens to acquire firearms. If anything, this rule will benefit licensees or applicants requesting hearings by informing them of their option to submit material that may mitigate or reverse ATF’s decision to revoke, suspend, or deny an

application for a Federal firearms license. Concerning the commenter’s second assertion, strengthening the penalties in § 922(t)(5) for violations of § 922(t)(1) is a matter for Congress, and cannot be addressed by ATF in this rulemaking. The Department notes that the amounts of civil fines and civil penalties as set forth in various Federal statutes are subject to being increased, by regulation, to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, codified as amended at 28 U.S.C. 2461 note. That is a matter to be addressed in a separate rulemaking.

Two commenters expressed concern that the 15-day period in which to file the request for an administrative hearing under 27 CFR 478.72 to review the denial of a license, or under § 478.74 to review the revocation or suspension of a license, or the imposition of a civil fine, is too short. One commenter suggested the response period should be extended to one month from the date the applicant or licensee receives a notice of the denial, revocation, or suspension of a Federal firearms license, or imposition of a civil fine. The second commenter suggested the response period should be extended to 45 days from receipt of such notice. Both commenters argued the additional time would provide licensees and applicants with a more reasonable amount of time to respond to the notice. ATF is unaware of any evidence demonstrating that the 15-day period, which has been in place for many years, is not ample time to request a hearing.<sup>2</sup> Moreover, if sufficient good cause is shown, the Director of Industry Operations may extend the time limit in individual cases pursuant to 27 CFR 478.22(a). Furthermore, the NPRM did not propose to change the 15-day period and the Department does not believe a change in the time period is necessary. However, the issue of notice as it pertains to firearms license administrative hearings may be addressed in a separate rulemaking, if necessary.

One commenter who supported the proposed rule suggested that ATF create a “database that ensures those who get licenses also have a photo that attaches the license and the serial number of that firearm together.” Although novel, this suggestion is not responsive to this rulemaking’s request for comments

<sup>2</sup> The notice does not require that an applicant or licensee submit supporting facts, arguments, or evidence along with the request for a hearing within the 15-day period. Instead, the hearing notice merely requires a response from the applicant or licensee stating the request for an administrative hearing.

regarding administrative hearings for Federal firearms licensees.

One commenter provided four comments regarding the implementation of the proposed rule. First, the commenter argued that the current “informal” hearing is only as informal as it suits ATF Counsel. Second, the commenter argued, “ATF Executives previously attempted at least the appearance of fairness in its administrative licensing proceedings by promulgating and adopting guidelines—known as the Administrative Action Order (‘AAO’)—which required uniformity in the handling and outcomes of ATF administrative matters, yet the AAO is ignored by ATF Counsel.” Third, the commenter argued, “[t]he false confidence generated by a system that ‘stacks the deck’ for one-sided adjudication in ATF’s favor fosters unnecessary hostility with the industry, while obstructing bona fide ATF decision-makers from entertaining or implementing common sense solutions.” Finally, the commenter argued, “[n]on-communication among ATF personnel in key positions manifests itself in situations that compromise the entire bureau’s integrity and reputation, not just the integrity and reputations of individual or isolated actors, and alienates the regulated environment.”

The issues presented by the commenter, while substantive and related to the firearms license administrative hearings process, generally address a separate issue of how cases are adjudicated. First, as will be discussed further below, the Department has decided to remove the word “informal” from the regulatory text of the final rule. Second, ATF procedures are implemented to provide fairness and uniformity to all participants. Furthermore, as noted above, ATF provides a pamphlet on the hearing process with each notice, and has published a public notice of Hearing Procedures Relating to Federal Firearms Licensees, 75 FR 48362, to provide guidance on the process. Third, the regulations do not prevent common-sense solutions, but instead permit parties to make offers of settlement for review and consideration before or after the hearing. The final rule clarifies that offers of settlement will not be entertained at the hearing because the hearing is not a settlement conference but an opportunity to establish the factual record. Fourth, communication between ATF personnel is an integral part of this process, and ATF disagrees with the commenter’s assertion that ATF personnel do not communicate with one another.

One commenter suggested further amendments to the proposed rule by adding and emphasizing the word “informal” in additional sections not amended in the proposed rule, including the second sentence in 27 CFR 478.71 and the section title of § 478.72. As will be discussed further below, however, the Department has decided to remove the word “informal” from the regulatory text of the final rule.

#### *Comments on Specific Sections of the Proposed Rule*

Several comments sought additional clarification of or suggested substantive changes to the proposed rule. Four commenters expressed concern that the use of the term “informal” as applied to firearms administrative license proceedings required further clarification. Additionally, one commenter argued that the proposed rule would be contrary to the requirements of the Administrative Procedure Act (APA).

#### *Informal Hearings*

As discussed in Section II of this preamble, the NPRM included language proposing to amend the regulations in subpart E of part 478 to clarify that firearms license administrative hearings are informal in nature and that adherence to civil court rules and procedures is consequently not required. See 77 FR at 5461. Some of the commenters expressed concern over the use of the term “informal,” arguing that it needed further clarification. Some of these commenters asked specifically what rules and procedures would be used in “informal” hearings, as well as whether and how “informal” proceedings would be recorded.

One commenter expressed support for the rule, but expressed the following concerns about the clarity of the term “informal”:

This notice states that the hearings are to be informal in nature, however further clarification is needed here I believe. How informal exactly? Will there be a record of the proceedings in the event that the decision is appealed and how would that be handled? If adherence to civil court rules and procedure is not required, then what type of rules and procedure will be required and implemented? I think there needs to be a little more detailed description of what type of process the person who requests a hearing will go through when the person is submitting their facts and arguments.

Additionally, one commenter who opposed the rule argued, “[t]o suggest that an ATF administrative hearing—as currently constituted—is ‘informal’ in any way is an unfettered mischaracterization.”

As the NPRM explained, the proposed rule would not change any of the procedures or rules that govern the administrative hearings provided for in §§ 478.72 and 478.74, but would merely clarify for the benefit of the licensee or applicant the opportunities afforded to the individual requesting such a hearing. In addition, ATF’s published explanation of its hearing procedures already states that “[h]earing procedures in firearms licensing matters are informal in nature.” 75 FR at 48363. Nonetheless, it is clear from the response of commenters both supporting and opposing the rule that the proposal to characterize firearms administrative hearings as “informal” in this rule would not provide additional clarification to a licensee or applicant seeking such a hearing, as was the original intent of the proposed rule.

As a result of these comments, and in light of the intent to clarify as expressed in the proposed rule, the Department is modifying the final rule so that it will no longer insert the phrase “the hearing shall be informal” into the regulatory text. So modified, the final rule will inform the licensee or applicant of the option to submit supporting material for consideration during a requested firearms license administrative hearing without stating or implying that the nature of those hearings will otherwise change.

#### *The Administrative Procedure Act*

One commenter argued that the inclusion of the term “informal” in the proposed rule is directly contrary to what Congress intended for license hearings under 18 U.S.C. 923(f)(2), and that Congress intended all firearms license proceedings to be subject to the formal adjudication requirements of the APA. The commenter concluded, “[t]he Administrative Procedure Act [under 5 U.S.C. 556(d)] requires that the hearings be formal proceedings where the agency has the burden of proof, where the evidence offered must be reliable, probative, and substantial, and where the applicant may present evidence and conduct cross-examination of the agency’s witnesses.”

Although the provisions of the APA generally apply to firearms license administrative hearings, ATF disagrees with the conclusion that the APA’s formal adjudication provisions are applicable to firearms license administrative proceedings. Under 5 U.S.C. 554(a), the formal adjudication provisions of the APA (sections 554, 556, and 557) apply “in every case of an adjudication required by statute to be determined on the record after opportunity for an agency hearing.” 5

U.S.C. 554(a). In order to trigger this requirement, courts have held, a statute generally must state that an agency shall provide a “hearing on the record,” rather than just a “hearing.” *R.R. Comm’n of Tex. v. United States*, 765 F.2d 221, 227 (D.C. Cir. 1985). Moreover, the APA’s formal adjudication provisions do not apply “to the extent that there is involved . . . a matter subject to a subsequent trial of the law and the facts *de novo* in a court.” 5 U.S.C. 554(a)(1).

The Act does not trigger the formal adjudication provisions of the APA with respect to firearms hearings. The pertinent provisions of the Act require the Attorney General to hold “a hearing,” not a hearing “on the record,” in connection with the denial, revocation, or suspension of a license, or imposition of a civil fine. See 18 U.S.C. 922(t)(5), 923(f)(2), 924(p)(1). Moreover, 18 U.S.C. 923(f)(3) permits an aggrieved party to, at any time within sixty days after the date notice of a decision is given, “file a petition with the United States district court for the district in which he resides or has his principal place of business for a *de novo* judicial review of [a license] denial or revocation.” See also 27 CFR 478.78 (authorizing a dissatisfied applicant or licensee to “file a petition for judicial review . . . with the U.S. district court for the district in which the applicant or licensee resides or has his principal place of business”). Accordingly, the APA’s formal adjudication procedures do not apply to ATF hearings conducted pursuant to 27 CFR 478.72 and 478.74. See *Shaffer v. Holder*, No. 1:09–0030, 2010 U.S. Dist. LEXIS 31415, at \*10, 2010 WL 1408829, at \*14 (M.D. Tenn. Mar. 30, 2010).

The commenter also cites APA procedural requirements contained in 5 U.S.C. 556. However, section 556(a) provides as follows: “This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.” Sections 553 or 554 state that the procedural requirements of section 556 apply to rules and adjudications that are “required by statute to be made [or determined] on the record after opportunity for an agency hearing.” As discussed above, the Act does not require firearms licensing hearings to be conducted “on the record.”

#### **IV. Final Rule**

For the reasons discussed above, this final rule has been revised from the proposed rule to omit any references that characterize hearings concerning the denial, suspension, or revocation of

a firearms license, or imposition of a civil fine, as “informal.” In addition, the Department is removing the term “or proposals of adjustment” in the final rule. The term “proposals of adjustment” is redundant when used with “offers of settlement” and is therefore unnecessary. The final rule will also clarify that during the hearing the applicant or licensee will have the opportunity to submit facts and arguments for review and consideration. Offers of settlement may be made before or after the hearing, but will not be entertained at the hearing, as the purpose of the hearing is to establish a factual record.

The Department has also revised sections 478.73 and 478.74 to clarify that those sections apply to actions to revoke or suspend a license, or impose a civil fine, under 18 U.S.C. 924(p). This is a technical change that merely reiterates the requirements of the statute, *see* 18 U.S.C. 924(p)(1)(A) (stating that applicants are entitled to “notice and opportunity for hearing” in such actions), and codifies ATF’s prior interpretation of sections 478.73 and 478.74, *see* 75 FR at 48362–63.

#### Statutory and Executive Order Reviews

##### A. Executive Order 12866 and 13563

This rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1, General Principles of Regulation, and section 6, Retrospective Analyses of Existing Rules.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

This rule will not have an annual effect on the economy of \$100 million or more, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal

governments or communities. Similarly, it does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866. Accordingly, this proposed rule is not a “significant regulatory action” as defined by Executive Order 12866.

Section 6 of Executive Order 13563 directs agencies to develop a plan to review existing significant rules that may be “outmoded, ineffective, insufficient, or excessively burdensome,” and to make appropriate changes where warranted. The Department selected and reviewed this rule under the criteria set forth in its Plan for Retrospective Analysis of Existing Rules, and determined that this final rule merely clarifies that an applicant or licensee requesting an administrative hearing as a result of the denial, suspension, or revocation of a firearms license, or the imposition of a civil fine, will have the opportunity for the submission and consideration of facts and arguments for review and consideration by the Director, and to make offers of settlement before or after a hearing.

##### B. Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, “Federalism,” the Attorney General has determined that this regulation does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

##### C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

##### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) 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. The Attorney General has reviewed this rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendments merely clarify that an applicant or licensee requesting an administrative hearing as a result of the denial, suspension, or revocation of a firearms license, or the imposition of a civil fine, will have the opportunity for the submission and consideration of facts and arguments for review and consideration by the Director, and to make offers of settlement before or after a hearing.

##### E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

##### F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### G. Paperwork Reduction Act

This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

#### Disclosure

Copies of the NPRM, all comments received in response to the NPRM, and this final rule will be available for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E–062, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648–8740.

#### Drafting Information

The author of this document is Shermaine Kenner, Office of Regulatory

Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

#### List of Subjects in 27 CFR Part 478

Administrative practice and procedure, Arms and munitions, Customs duties and inspection, Exports, Imports, Intergovernmental relations, Law enforcement officers, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, and Transportation.

#### Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR part 478 is amended as follows:

#### PART 478—COMMERCE IN FIREARMS AND AMMUNITION

■ 1. The authority citation for 27 CFR part 478 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).

■ 2. In § 478.72, add a new fifth sentence to read as follows:

#### § 478.72 Hearing after application denial.

\* \* \* During the hearing the applicant will have the opportunity to submit facts and arguments for review and consideration; offers of settlement will not be entertained at the hearing but may be made before or after the hearing. \* \* \*

■ 3. In § 478.73, revise the last sentence of paragraph (a) to read as follows:

#### § 478.73 Notice of revocation, suspension, or imposition of civil fine.

(a) \* \* \* In addition, pursuant to 18 U.S.C. 922(t)(5) and 18 U.S.C. 924(p), a notice of revocation, suspension, or imposition of a civil fine may be issued on ATF Form 4500 whenever the Director has reason to believe that a licensee has knowingly transferred a firearm to an unlicensed person and knowingly failed to comply with the requirements of 18 U.S.C. 922(t)(1) with respect to the transfer and, at the time that the transferee most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that the transferee's receipt of a firearm would violate 18 U.S.C. 922(g) or 922(n) or State law; or that a licensee has violated 18 U.S.C. 922(z)(1) by selling, delivering, or transferring any handgun to any person other than a licensee, unless the transferee was provided with a secure

gun storage or safety device for that handgun.

\* \* \* \* \*

■ 4. In § 478.74, revise the fifth and sixth sentences and add a seventh sentence to read as follows:

#### § 478.74 Request for hearing after notice of suspension, revocation, or imposition of civil fine.

\* \* \* If the decision is that the license should be revoked, or, in actions under 18 U.S.C. 922(t)(5) or 924(p), that the license should be revoked or suspended, or that a civil fine should be imposed, a certified copy of the summary shall be furnished to the licensee with the final notice of revocation, suspension, or imposition of a civil fine on ATF Form 5300.13. If the decision is that the license should not be revoked, or in actions under 18 U.S.C. 922(t)(5) or 924(p), that the license should not be revoked or suspended, and a civil fine should not be imposed, the licensee shall be notified in writing. During the hearing the licensee will have the opportunity to submit facts and arguments for review and consideration; offers of settlement will not be entertained at the hearing but may be made before or after the hearing.

Dated: May 17, 2016.

**Loretta E. Lynch,**  
*Attorney General.*

[FR Doc. 2016–12100 Filed 5–20–16; 8:45 am]

**BILLING CODE 4410–FY–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R01–OAR–2012–0289; FRL–9946–69–Region 1]

#### Air Plan Approval; New Hampshire; Ozone Maintenance Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire that contains an ozone maintenance plan for New Hampshire's former 1-hour ozone nonattainment areas. The Clean Air Act requires that areas that are designated attainment for the 1997 8-hour ozone standard, and also had been previously designated either nonattainment or maintenance for the 1-hour ozone standard, develop a plan showing how the state will

maintain the ozone standard for the area. The intended effect of this action is to approve New Hampshire's maintenance plan. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective July 22, 2016, unless EPA receives adverse comments by June 22, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OAR–2012–0289 at <http://www.regulations.gov>, or via email to [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov). For comments submitted at [Regulations.gov](http://www.Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.Regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Anne Arnold, Air Quality Planning Unit, U.S. Environmental Protection Agency, Suite 100, Mail Code OEP05–02, Boston, MA 02109–3912, telephone number (617) 918–1047, fax number (617) 918–0047, email [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. What is the background for this action?
- II. What action is EPA taking?