

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 178**

[T.D. ATF-361; Ref: T.D. ATF-354 and Notice No. 789]

RIN: 1512-AB23

Implementation of Public Law 103-159, Including the Brady Handgun Violence Prevention Act (93F-057P)**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.**ACTION:** Final rule; Treasury decision.

SUMMARY: This final rule implements the provisions of Public Law 103-159, including the Brady Handgun Violence Prevention Act. These regulations implement the law by imposing a waiting period of 5 days before a licensed firearms importer, licensed manufacturer, or licensed dealer may transfer a handgun (other than the return of a handgun to the person from whom it was received) to a nonlicensed individual. Regulations are also prescribed with regard to reporting requirements for multiple handgun sales, labeling of packages containing a firearm, theft of firearms from firearms licensees, and increased license fees for dealers in firearms.

Unless otherwise indicated, the temporary regulations published in the Federal Register on February 14, 1994 (T.D. ATF-354), are made permanent upon the effective date of this final rule.

EFFECTIVE DATE: March 29, 1995.**FOR FURTHER INFORMATION CONTACT:**

James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:**Legislative Background**

On November 30, 1993, Public Law 103-159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Pub. L. 103-159, the "Brady Handgun Violence Prevention Act" (hereinafter, "Brady" or "Brady law"), provides for a national waiting period of 5 days before a licensed importer, licensed manufacturer, or licensed dealer may transfer a handgun to a nonlicensed individual (interim provision), and for the establishment of a permanent national instant criminal background check system to be queried by firearms licensees before transferring any firearm to nonlicensed individuals.

The law requires that the permanent system be established not later than November 30, 1998. Violations of either the interim or permanent provision are punishable by a fine and/or imprisonment for not more than 1 year.

Titles II and III of Pub. L. 103-159 relate to reporting requirements for multiple handgun sales, labeling of packages containing a firearm, thefts of firearms from licensed firearms dealers, and increased license fees for dealers in firearms.

On September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 (108 Stat. 1796) was enacted. Title XXXII of Pub. L. 103-322 amended the GCA by eliminating the Federal 5-day waiting period requirement imposed by Brady with respect to a licensee's return of a handgun to the person from whom it was received.

Waiting Period (Interim Provision)

The Brady law provides that the waiting period provisions of the law were effective on February 28, 1994, and cease to apply on November 30, 1998. Brady imposes a waiting period of 5 business days (defined in the statute as days on which State offices are open) before a licensee may sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to a nonlicensed individual. As defined in the Brady law, the term "handgun" means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

Basically, the waiting period provision makes it unlawful for any licensed firearms importer, manufacturer, or dealer to sell, deliver, or transfer a handgun to a nonlicensed individual (transferee), unless the licensee—

(1) obtains a statement of the transferee's intent to obtain a handgun containing the transferee's name, address, and date of birth appearing on a valid photo identification, a description of the identification document, a statement that the transferee is not a felon, under indictment, or otherwise prohibited from receiving or possessing the handgun under Federal law, and the date the statement is made;

(2) verifies the identity of the transferee by examining the identification document presented;

(3) within 1 day after the transferee furnishes the statement, contacts the

chief law enforcement officer (CLEO) of the place of residence of the transferee and advises such officer of the contents of the statement;

(4) within 1 day after the transferee furnishes the statement, transmits a copy of the statement to the CLEO of the place of residence of the transferee; and

(5) waits 5 business days from the date the licensee furnished notice of the contents of the statement to the CLEO before transferring the handgun to the transferee (during which period the licensee has not received information from the CLEO that receipt or possession of the handgun by the transferee would be in violation of law); or receives notice from the CLEO of the place of residence of the transferee that the officer has no information that the transferee's receipt or possession of the handgun would violate the law.

Subsequent to the sale or transfer of the handgun, the law requires a licensee who receives a report from a CLEO containing information that receipt or possession of the handgun by the transferee would violate Federal, State, or local law to communicate within 1 day any information the licensee has concerning the transfer to the CLEO of the place of business of the licensee and to the CLEO of the place of residence of the transferee.

As provided in Brady, the term "chief law enforcement officer" means "the chief of police, the sheriff, or an equivalent officer or the designee of any such individual." The law requires that the chief law enforcement officer within 5 business days make a reasonable effort to determine whether the transferee is prohibited by law from receiving or possessing the handgun sought to be purchased. Except for records relating to a proposed handgun sale that would violate the law, CLEOs are required to destroy within 20 days the purchaser's statement, any record containing information derived from the statement, and any record created as a result of the notice referred to in (3) above.

Furthermore, these records may only be used to carry out the purposes of the Brady law, and no information in the records may be conveyed to any person for purposes other than complying with the Brady law.

Brady also provides that an individual who is determined to be ineligible to purchase a handgun under the waiting period provision may request that the CLEO who made the determination provide reasons for that determination. The officer must provide such reasons to the individual in writing within 20 business days after receipt of the request.

Alternatives to the Waiting Period

The statute provides the following alternatives to the waiting period provision:

(1) The transferee provides a written statement issued within the last 10 days by the CLEO of the transferee's place of residence that the transferee requires a handgun because of a threat to the life of the transferee or any member of the transferee's household;

(2) The transferee presents to the licensee a permit issued by the State within the past 5 years to possess a handgun and the law of the State requires verification that the transferee is not prohibited by law from possessing the handgun;

(3) Purchases in States which require that, before any licensee transfers a handgun to an individual, an authorized government official has verified that possession of the handgun by the transferee would not violate the law (e.g., a background check);

(4) Purchases of handguns which are subject to the National Firearms Act and which have been approved for transfer under 27 CFR Part 179 (Machine Guns, Destructive Devices, and Certain Other Firearms);

(5) Purchases of handguns for which the Secretary has certified that compliance with the 5-day waiting period procedure is impracticable because the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025 (i.e., 25 officers per 10,000 square miles), the premises of the licensee are remote in relation to the CLEO of the area, and there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

Additional Provisions of Pub. L. 103-159

Titles II and III of Pub. L. 103-159 provide additional amendments to the GCA. These provisions, which became effective on November 30, 1993, are as follows:

(1) *Multiple sales reports.* In addition to furnishing reports of multiple handgun sales to ATF, licensees are required to submit such reports to the "department of State police or State law enforcement agency of the State or local law enforcement agency of the jurisdiction in which the sale or other disposition took place."

(2) *Common carriers.* Common or contract carriers are prohibited from requiring or causing any label or other written notice to be placed on the

outside of any package, luggage, or other container indicating that such package contains a firearm. In addition, common or contract carriers who deliver firearms in interstate or foreign commerce are required to obtain written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(3) *Theft of firearms.* It is unlawful for any person to steal from the person or premises of a Federal firearms licensee any firearm in the licensee's business inventory which has been shipped or transported in interstate or foreign commerce.

(4) *License fees.* License fees for all dealers in firearms (other than destructive devices), including pawnbrokers, have been increased to \$200 for 3 years, except that the fee for renewal of a license is \$90 for 3 years.

Temporary Rule and Notice of Proposed Rulemaking

On February 14, 1994, ATF published in the Federal Register a temporary rule (T.D. ATF-354, 59 FR 7110) implementing the provisions of Public L. 103-159, including the Brady Handgun Violence Prevention Act. The temporary rule provided immediate guidance to Federal firearms licensees concerning their obligations under the Brady law.

On February 14, 1994, the Bureau also published a notice of proposed rulemaking cross-referenced to the temporary regulations (Notice No. 789, 59 FR 7115). The comment period for Notice No. 789 closed on May 16, 1994.

Analysis of Comments

ATF received 105 comments in response to Notice No. 789. Comments were submitted by Federal firearms licensees, nonlicensees, industry trade groups and other organizations (e.g., Collateral Loan & Secondhand Dealers Association of California, Handgun Control, Inc., and the National Rifle Association of America), members of Congress, law enforcement officials, one Federal agency, and one State Government.

Forty-five commenters, representing 43 percent of the total comments received, expressed opposition to the Brady law and urged its repeal. To accomplish this, however, legislative action would be necessary. Several other commenters requested changes that would also require legislative action. These include reducing or eliminating the license fees for gunsmiths, eliminating the provision of law with respect to the theft of firearms from a licensee, exempting police officers from the waiting period

requirement when purchasing a handgun for other than official use, eliminating the requirement that the licensee forward to the CLEO a copy of the transferee's statement of intent to obtain a handgun, and eliminating the 5-year limitation for permits in States that have a permit-to-purchase system. Other issues addressed in the comments will be discussed in the following paragraphs.

Pawn Transactions—Public Law 103-322

Twenty-five commenters disagree with ATF's interpretation that the Brady law applies to the redemption of a pawned handgun. They argue that the law was not intended to apply to pawn transactions where a handgun is redeemed by the owner.

Subsequent to publication of the temporary regulations, on September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994 was enacted as Pub. L. 103-322 (108 Stat. 1796). Title XXXII of Pub. L. 103-322 amended the GCA by eliminating the Federal 5-day waiting period requirement imposed by Brady with respect to a licensee's return of a handgun to the person from whom it was received. Consequently, effective September 13, 1994, the Federal waiting period no longer applies to the redemption of a pawned handgun by the person from whom it was received. Accordingly, § 178.102(a) of the final regulations has been amended to include this exception to the requirements of the Brady law.

Background Check Fees

Several commenters, including licensees and nonlicensees, oppose the imposition of fees by law enforcement officials for background records checks. They argue that there is nothing in the Brady law or temporary regulations which allow CLEOs to charge a fee for such checks.

The Brady law is silent with respect to the imposition of fees for State and local officials performing records checks. It neither authorizes nor prohibits CLEOs from imposing such a fee. Consequently, such fees may be imposed pursuant to State or local law. Therefore, the final rule does not address such fees.

Form 5300.35

Some commenters suggested that Form 5300.35 and Form 4473 be combined into one form. This suggestion was not adopted. While the forms contain duplicative information, they serve distinct purposes and are executed at different times. Form

5300.35 is executed at the time the prospective purchaser informs the licensee of an intent to acquire a handgun. Form 4473 is executed when the handgun is delivered. A considerable lapse of time may separate the two events. Consequently, the purchaser's certification on Form 5300.35 that he or she is not within a category of persons prohibited from receiving or possessing firearms must be made again on Form 4473 when the firearm is delivered to the purchaser. During the period between execution of the two forms, the purchaser may have been indicted, convicted of a felony, or otherwise fallen within one of the categories of persons who are prohibited by law from receiving or possessing firearms. In addition, it is impractical to use a combined form as the Form 4473 contains information that may not be provided to the CLEO, including a description of the handgun to be purchased. The Brady law expressly limits the information that may be required on Form 5300.35. Finally, a combination of the two forms would be overly complicated and confusing to licensees and handgun purchasers.

Two commenters requested that the regulations be revised to include as optional information on Form 5300.35 the transferee's race in order to assist law enforcement officials in verifying the transferee's eligibility to possess a handgun. ATF agrees with the commenters that race would be helpful in identifying the transferee. However, ATF believes that the other information on the form, including social security number and date of birth, is adequate for law enforcement officials to conduct a criminal records check. Accordingly, ATF is not amending the regulations and the form to include the transferee's race.

Another modification to Form 5300.35 was requested by the Immigration and Naturalization Service (INS) of the Department of Justice. In order to provide assistance to CLEOs in identifying ineligible applicants for handguns, the INS has suggested that a transferee who is a lawful permanent resident alien of the United States include his or her alien registration number (Alien #A _____) on Form 5300.35 (Item 5g, "Are you illegally in the United States?"). The registration number will enable INS to conduct computer checks. Without this information, it would be impossible for INS to grant the assistance requested by CLEOs. In light of INS's request, ATF is amending § 178.130(a)(2) to include the alien registration number on Form 5300.35 as optional information.

Some commenters suggested that the regulations prescribe a maximum time period between the completion of Form 5300.35 and delivery of the handgun. The Brady law is silent on this issue. It requires licensees to execute Form 5300.35 after the most recent proposal of transfer by the transferee and before transferring the handgun. The law would not prohibit a licensee from transferring a handgun even though there is a long lapse of time between execution of the form and delivery of the firearm. However, ATF is encouraging licensees to have the form executed as close in time to the delivery of the handgun as possible, so that any records check performed will be recent.

Another commenter requested that § 178.130(c), which requires licensees to retain all executed original Forms 5300.35 even when a transfer does not occur, be eliminated. One commenter also recommended that the final regulations clarify how long licensees must retain these forms.

ATF is not amending § 178.130(c). The retention of executed Forms 5300.35 is necessary to ensure compliance with the Brady law which requires that the form be completed at the time the buyer expresses an intent to acquire a handgun from a licensee.

With respect to retention of Form 5300.35, § 178.129(b) provides that licensees shall retain each Form 5300.35 for a period of not less than 5 years after notice of the intent to obtain a handgun was forwarded to the chief law enforcement officer.

Recordkeeping Requirements

One commenter requested an amendment of § 178.131(a)(3), concerning recordkeeping requirements for handgun transactions in States that have a permit/license-to-purchase background check system. This section provides that the licensee shall retain a copy of the purchaser's permit or license and attach it to the firearms transaction record, Form 4473, executed upon delivery of the handgun. The commenter contends that this requirement places an unnecessary and expensive burden on licensees, particularly for those licensees who cannot afford, or do not have access to, a photocopier.

Rather than making a copy of the purchaser's permit or license, the commenter suggests that the licensee make a record of the information contained on the permit. ATF believes that recording this information on Form 4473 sufficiently demonstrates that a handgun transfer has been made under the State permit system. Accordingly, this final rule amends § 178.131(a)(3) to

require licensees to either retain a copy of the purchaser's permit or license and attach it to the Form 4473 or record certain minimal information contained on such permit or license on the Form 4473, including any identifying number, the date of issuance and the expiration date (if provided).

The same commenter requested an amendment of § 178.131(a)(4). This section requires licensees in alternative States with "instant check" systems to retain with the Form 4473 a statement showing the date of verification, any identifying number, and the name, location, and title of the authorized government official who did the background check. According to the commenter, "[i]n virtually all instances, the person actually checking the status of the transferee will not be an 'authorized government official' personally known to the licensee who will conduct the appropriate records check."

Since the agency responsible for determining the status of the purchaser will have verifiable information that the background check was completed, the commenter has suggested that the regulations be amended to require the name of the agency responsible for conducting the records check rather than the name of the Government official who made the check.

In response, ATF is revising § 178.131(a)(4) to require licensees in alternative States with "instant check" systems to retain with the Form 4473 a statement indicating the date of verification and any identifying number assigned to the transaction by the agency responsible for conducting the verification of eligibility.

Common and Contract Carriers

Section 922(f)(2) of the GCA and its implementing regulation in § 178.31(d) impose a new requirement on common or contract carriers to obtain a written receipt upon delivery of a package or other container in which there is a firearm. Two commenters raised concerns regarding the application of § 178.31(d) which they believe need to be addressed in the final regulations.

One commenter, a trade association of the moving industry, noted that some customers who are relocating do not reveal to the mover that a firearm is included in the household goods being shipped. The firearm may, for example, be in a dresser or other piece of furniture. Since the mover has no knowledge that there is a firearm included in the shipment, the commenter contends that the carrier should not be held accountable for

failing to obtain proof of delivery of the firearm from the recipient.

Pursuant to section 924 of the GCA, whoever "knowingly" violates the provisions of section 922(f) shall be subject to certain penalties, including a fine, imprisonment, or both. If the carrier has no knowledge that a firearm is being transported in the shipment, no violation would occur. For clarification, ATF is amending § 178.31(d) in the final regulations to add the requisite knowledge element.

The second commenter, a trade and service organization of the larger U.S. airlines, also expressed some concerns regarding the application of § 178.31(d). First, the commenter asked whether the regulation requires an airline to obtain a written receipt from a passenger when baggage, containing a declared firearm that accompanies the passenger, is delivered at the destination airport. ATF interprets section 922(f) as not requiring carriers to obtain a written acknowledgement of receipt upon return of a firearm to a passenger who places a firearm in the carrier's custody for the duration of the trip. ATF is amending § 178.31(d) in the final regulations to clarify this point.

The commenter also inquired as to whether an electronic signature satisfies the receipt requirement of § 178.31(d). According to the commenter, small cargo package services utilize electronic notebooks that enable a consignee to sign electronically, rather than in ink, for a shipment. Hard copies of the delivery records, including the signature of the recipients, can be printed out. The records are retrievable from the database by the name of the consignee or consignor.

ATF finds that an electronic signature is a "written acknowledgement of receipt" which would satisfy the requirements of § 178.31(d), provided the signature is that of the individual who received the package. However, ATF believes it is unnecessary to amend the regulations to specifically address this particular type of receipt.

Finally, the commenter requested a clarification of § 178.31 with respect to the handling of firearms shipped on commercial air carriers on behalf of governmental entities, specifically, military personnel. In the case of firearms shipped as cargo on behalf of military personnel, § 925(a)(1) of the GCA provides that the provisions of the Act do not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of governmental entities. Thus, the provisions of § 178.31 are not applicable

to firearms being shipped or transported on behalf of governmental entities, including the Armed Forces.

Since there are existing regulations which implement the provisions of § 925(a)(1), i.e., § 178.141, ATF has determined that amendment of § 178.31 is unnecessary.

Chief Law Enforcement Officers

Two commenters suggested that the final regulations provide guidance for law enforcement officers with respect to their responsibilities and duties in implementing the provisions of Brady. This includes a clarification of who is a CLEO and who may designate a CLEO; a clarification that CLEOs have no authority to impose a "temporary hold" on the transfer of a handgun to a transferee who is not prohibited by law from purchasing a handgun; guidance to CLEOs regarding what constitutes "reasonable effort" when conducting background checks on purchasers; and guidance regarding the destruction of Brady related records by law enforcement officers.

ATF has not included the commenters' suggestions in the final rule, since the regulations address the responsibilities of Federal firearms licensees. ATF has given actual notice to CLEOs of their responsibilities under the Brady law.

Finally, the temporary regulations, § 178.102(a)(3), provide that the notice licensees are required to give CLEOs shall be actual notice and shall be given in a manner acceptable to the CLEO. For clarification, ATF is amending § 178.102(a)(3) to provide that licensees in jurisdictions where CLEOs have specified hand-delivery as the only means of delivering notice will satisfy their legal obligation under the Brady law if they provide notice to the CLEO by certified mail (return receipt requested) or by any other method of mailing which will provide a written receipt. This section has been redesignated as § 178.102(b).

Identification of Transferee

The temporary regulations, § 178.102(a)(1)(ii), require licensees to verify the identity of the transferee by examining the identification document presented. The term "identification document" is defined in Brady and the regulations as "a document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State . . ." A question was raised in the comments with respect to acceptable identification

documents in the case of military personnel.

In the case of military personnel, the purchaser's military identification card and official orders showing that his permanent duty station is within the State where the licensed premises is located will suffice for purposes of the identification requirement of Brady.

ATF was also asked if a licensee could accept an identification document from a transferee who has an incorrect address. A transferee who presents a driver's license with an address that is not a current residence would not present a proper "identification document" as that term is defined in the law and the regulations. However, if the individual presents a combination of documents, all issued by a governmental entity, containing all the information required by Brady, the combination of documents would satisfy the identification requirements of the law.

ATF believes the preceding discussion sufficiently clarifies the application of § 178.102(a)(1)(ii), and an amendment of the regulations is unnecessary. This section has been redesignated as § 178.102(a)(2) in the final regulations.

Miscellaneous

One commenter suggested that the final regulations specify that the waiting period provisions of Brady do not apply to licensed collectors of curios and relics. ATF is not adopting this suggestion, since Brady applies to certain handgun transactions by licensed collectors. The law and regulations make it clear that the waiting period provisions of Brady apply to transfers of handguns by licensed IMPORTERS, licensed MANUFACTURERS, and licensed DEALERS to individuals who are not licensed under section 923. Thus, it is apparent that transfers of handguns BY licensed collectors are not subject to the provisions of Brady. As for transfers of handguns by licensed importers, licensed manufacturers, and licensed dealers TO licensed collectors, such transfers are subject to Brady unless the collector is purchasing a handgun designated as a curio or relic. A collector's license authorizes the licensee to engage only in transactions in firearms designated as curios or relics and would not enable the licensed collector to avoid the requirements of the GCA, including the Brady law, for firearms other than curios or relics.

One commenter recommended that the final regulations include a provision that requires licensees to obtain a transferee's fingerprints to resolve

appeals involving positive identification. ATF is not adopting this suggestion. The Brady law does not involve licensees in the appeals process. If a CLEO determines that a prospective buyer is ineligible to receive a firearm and the handgun purchase is denied, Brady provides that the individual can request from the CLEO the reason for such determination. Thus, the licensee is no longer involved and the matter will be resolved by the prospective buyer and the CLEO. In situations where the denial is based on inconclusive identification of the transferee, it is incumbent upon the prospective buyer to provide the CLEO with whatever additional identifying information is needed, including fingerprints, to establish positive identification.

Finally, this Treasury decision makes some technical amendments to the temporary regulations. Specifically, the temporary regulations redesignated § 178.150 as § 178.151. Section 178.150 should have been redesignated as § 178.152. In addition, § 178.126a has been amended to clarify that licensees retain a copy of Form 3310.4, consistent with the instructions on the form. Section 178.129 provides that licensees shall retain such copies of Form 3310.4 for a period of not less than 5 years. Lastly, the definition of the term "chief law enforcement officer" has been moved from § 178.11 to § 178.102(c).

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action because the economic effects flow directly from the underlying statute and not from this final rule. Accordingly, this final rule is not subject to the analysis required by this Executive order.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The collection of information contained in this final regulation has 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. 3504(h)) under control number 1512-0520. The estimated average annual burden associated with the collection of information in this regulation is 2.52 hours per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Information Programs Branch, Room 3450, 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 Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

Disclosure

Copies of the temporary rule, 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 Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 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.

Authority and Issuance

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

27 CFR Part 178 is amended as follows:

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).

§ 178.11 [Amended]

Par. 2. Section 178.11 is amended by removing the definition for "chief law enforcement officer."

Par. 3. Section 178.31 is amended by revising paragraph (d) to read as follows:

§ 178.31 Delivery by common or contract carrier.

* * * * *

(d) No common or contract carrier shall knowingly deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm: *Provided*, That this paragraph shall not apply with respect to the

return of a firearm to a passenger who places firearms in the carrier's custody for the duration of the trip.

Par. 4. Section 178.102 is revised to read as follows:

§ 178.102 Sales or deliveries of handguns after February 27, 1994, and before November 30, 1998.

(a) *Waiting period.* Except as provided in paragraph (d), a licensed importer, licensed manufacturer, or licensed dealer shall not sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to any individual who is not licensed under this part unless the licensee:

(1) Receives from the transferee a statement of intent to obtain a handgun on Form 5300.35 in accordance with § 178.130;

(2) Verifies the identity of the transferee by examining the identification document presented, and noting on Form 5300.35 the type of identification used;

(3) Within 1 day after the transferee furnishes the statement, provides notice of the contents of the statement on Form 5300.35, in the manner prescribed by paragraph (b) of this section, to the chief law enforcement officer of the place of residence of the transferee;

(4) Within 1 day after the transferee furnishes the statement to the licensee, transmits a copy of Form 5300.35 to the chief law enforcement officer of the place of residence of the transferee; and

(5)(i) Five business days (meaning days on which State offices are open) have elapsed from the date the licensee furnished actual notice of the contents of the statement to the chief law enforcement officer, during which period the licensee has not received information from such officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(ii) The licensee has received notice from the chief law enforcement officer within the 5 business days that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law.

Example 1. A licensee furnishes actual notice of the contents of the statement to the chief law enforcement officer on Tuesday. If State offices are not open on Saturday and Sunday, 5 business days would have elapsed on the following Tuesday. The licensee may deliver the handgun on the next day, Wednesday.

Example 2. A licensee furnishes actual notice of the contents of the statement to the chief law enforcement officer on Saturday. If State offices are not open on Saturday and Sunday, 5 business days would have elapsed

on the following Friday. The licensee may deliver the handgun on the next day, Saturday.

(b) *Form of notice.* The notice required by paragraph (a)(3) of this section shall be actual notice and shall be given in a manner acceptable to such officer. For example, if the chief law enforcement officer will only accept notice in writing and not by telephone, notice shall be given by the licensee to the chief law enforcement officer in writing. In that case, the 5-day waiting period prescribed by paragraph (a)(5)(i) of this section begins at the time such written notice is received by the chief law enforcement officer. If the licensee sends notice to such officer by mail, the licensee shall send the notice by certified mail (return receipt requested) or by any other method of mailing which will provide a written receipt: Provided, That where the chief law enforcement officer will only accept notice by hand delivery, notice may be sent in writing by the licensee to the chief law enforcement officer by certified mail (return receipt requested) or by any other method of mailing which will provide a written receipt.

(c) *Chief law enforcement officer.* The law requires that notice of the contents of the transferee's statement of intent to obtain a handgun and the statement be provided by the licensee to the chief law enforcement officer of the place of residence of the transferee. For purposes of this section, § 178.130, and § 178.131, the "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual. Where the State or local law enforcement officials have notified the licensee that a particular official has been designated to receive the notice and statement specified in paragraphs (a) (3) and (4) of this section, the licensee shall provide the information to that designated official.

(d) *Alternatives to waiting period.* The provisions of paragraph (a) of this section shall not apply if—

(1) The transferee has presented to the licensee a written statement, issued by the chief law enforcement officer of the transferee's place of residence, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee. The written statement must have been issued by the chief law enforcement officer during the 10-day period ending on the date that the transferee has informed the licensee of the transferee's intention to obtain a handgun. The written statement shall be on a letter bearing the letterhead of the chief law enforcement officer and shall be signed by the officer and dated;

(2) The transferee has presented to the licensee a permit or license that—

(i) Allows the transferee to possess or acquire a handgun;

(ii) Was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(iii) The law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of Federal, State, or local law;

(3) The law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under this part, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(4) The handgun is subject to the provisions of the National Firearms Act and has been approved for transfer under 27 CFR Part 179; or

(5) On application of the licensee, in accordance with the provisions of § 178.150, the Director has certified that compliance with paragraph (a) of this section is impracticable.

(6) The documents referred to in paragraphs (d)(1) and (2) of this section shall be retained in the records of the licensee in accordance with the provisions of § 178.131.

(e) *Disclosure of information.* (1) Any licensed importer, licensed manufacturer, or licensed dealer who, after the transfer of a handgun to a nonlicensee, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day (meaning a day on which State offices are open) after receipt of the report, communicate any information the licensee has concerning the transfer and the transferee, including a copy of Form 4473 required by § 178.124, to the chief law enforcement officer of the place of business of the licensee and to the chief law enforcement officer of the place of residence of the transferee. The licensee may also provide this information to the local ATF office.

(2) Any licensed importer, licensed manufacturer, or licensed dealer who receives information from a chief law enforcement officer regarding the transfer of a handgun to a nonlicensee, not otherwise available to the public, shall not disclose such information

except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(Approved by the Office of Management and Budget under control number 1512-0520)

Par. 5. Section 178.126a is amended by adding a fifth sentence to the text preceding Example 1 to read as follows:

§ 178.126a Reporting multiple sales or other disposition of pistols and revolvers.

* * * The licensee shall retain one copy of Form 3310.4 and attach it to the firearms transaction record, Form 4473, executed upon delivery of the pistols or revolvers.

* * * * *

Par. 6. Section 178.129(b) and the parenthetical text at the end of the section are revised to read as follows:

§ 178.129 Record retention.

* * * * *

(b) *Firearms transaction record, statement of intent to obtain a handgun, and reports of multiple sales or other disposition of pistols and revolvers.* Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition. Licensees shall retain each Form 5300.35 for a period of not less than 5 years after notice of the intent to obtain the handgun was forwarded to the chief law enforcement officer. Licensees shall retain each copy of Form 3310.4 for a period of not less than 5 years after the date of sale or other disposition.

* * * * *

(Paragraph (b) approved by the Office of Management and Budget under control numbers 1512-0520 and 1512-0006; all other recordkeeping approved by the Office of Management and Budget under control number 1512-0129.)

Par. 7. Section 178.130 is amended by revising paragraphs (a) and (e) to read as follows:

§ 178.130 Statement of intent to obtain a handgun after February 27, 1994, and before November 30, 1998.

(a)(1) Except as provided in §§ 178.102(d) and 178.131, a licensed importer, licensed manufacturer, or licensed dealer shall not sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) unless the licensee has received from the transferee a statement of intent to obtain a handgun on Form 5300.35 in duplicate. The statement shall contain the transferee's name, address, and date of birth. The transferee must date and execute the sworn statement contained on the form showing that the transferee

is not under indictment for a crime punishable by imprisonment for a term exceeding 1 year; has not been convicted in any court of such a crime; is not a fugitive from justice; is not an unlawful user of or addicted to any controlled substance; has not been adjudicated as a mental defective or been committed to a mental institution; is not an alien who is illegally or unlawfully in the United States; has not been discharged from the Armed Forces under dishonorable conditions; and is not a person who, having been a citizen of the United States, has renounced such citizenship.

(2) In order to facilitate the transfer of a handgun and enable the chief law enforcement officer to verify the identity of the person acquiring the handgun, Form 5300.35 requests certain additional optional information. This information includes the social security number, height, weight, sex, alien registration number, and place of birth of the transferee. Such information may help avoid the possibility of the transferee being misidentified as a felon or other prohibited person.

* * * * *

(e) A licensee may obtain, upon request, an emergency supply of Forms 5300.35 from any regional director (compliance) or local ATF office (compliance).

* * * * *

Par. 8. Section 178.131 is revised to read as follows:

§ 178.131 Handgun transactions not subject to the waiting period.

(a)(1) A licensed importer, licensed manufacturer, or licensed dealer whose sale, delivery, or transfer of a handgun is made pursuant to the alternative provisions of § 178.102(d) and is not subject to the waiting period prescribed by § 178.102(a) shall maintain the records required by this paragraph.

(2) If the transfer is pursuant to a written statement of the chief law enforcement officer in accordance with § 178.102(d)(1), the licensee shall retain such statement and attach it to the firearms transaction record, Form 4473, executed upon delivery of the handgun.

(3) If the transfer is pursuant to a permit or license in accordance with § 178.102(d)(2), the licensee shall either retain a copy of the purchaser's permit or license and attach it to the firearms transaction record, Form 4473, or record on the firearms transaction record, Form 4473, any identifying number, the date of issuance, and the expiration date (if provided) from the permit or license.

(4) If the transfer is pursuant to a verification of eligibility to possess a handgun (e.g., an instant record check) by a government official in accordance with § 178.102(d)(3), the licensee shall attach to the firearms transaction record, Form 4473, executed upon delivery of the handgun, a statement showing the date of verification and any identifying number assigned to the transaction by the agency responsible for conducting the verification of eligibility.

(5) If the transfer is pursuant to a certification by ATF in accordance with §§ 178.102(d)(5) and 178.150, the licensee shall maintain the certification as part of the records required to be kept under this subpart and for the period prescribed for the retention of Form 5300.35 in § 178.129(b).

(b) The requirements of this section shall be in addition to any other recordkeeping requirements contained in this part. (Approved by the Office of Management and Budget under control number 1512-0520)

Par. 9. Section 178.150 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 178.150 Alternative to handgun waiting period in certain geographical locations.

(a) The provisions of § 178.102(d)(5) shall be applicable when the Director has certified that compliance with the waiting period provisions of § 178.102(a) is impracticable because:

* * * * *

Par. 10. In Subpart I, § 178.151, Seizure and forfeiture, is redesignated as § 178.152.

Signed: December 6, 1994.
Daniel R. Black,
Acting Director.

Approved: December 27, 1994.
John P. Simpson,
Deputy Assistant Secretary, Regulatory, Tariff and Trade Enforcement.
[FR Doc. 95-4886 Filed 2-24-95; 8:45 am]

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