

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

[T.D. ATF-383; Ref: T.D. ATF-363 and Notice No. 807]

RIN 1512-AB35

Implementation of Public Law 103-322, the Violent Crime Control and Law Enforcement Act of 1994—Importation of Ammunition Feeding Devices With a Capacity of More Than 10 Rounds (94F-022P)**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.**ACTION:** Temporary rule (Treasury decision).

SUMMARY: This temporary rule amends the regulations by providing that ammunition feeding devices with a capacity of more than 10 rounds manufactured on or before September 13, 1994, the date of enactment of Public Law 103-322, are eligible for importation into the United States for general commercial sale. The temporary rule also provides guidance on acceptable evidence that magazines sought to be imported were manufactured on or before September 13, 1994. The temporary rule will remain in effect until superseded by final regulations.

In the Proposed Rules section of this Federal Register, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication date of this temporary rule.

EFFECTIVE DATES: The temporary regulations are effective on July 29, 1996.

ADDRESSES: Send written comments to: Chief, Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; Washington, DC 20091-0221.

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:**Background**

On September 13, 1994, Public Law 103-322 (108 Stat. 1796) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). The provisions of Pub. L. 103-322, the Violent Crime Control and Law Enforcement Act of 1994 (hereafter, "the

Act"), became effective upon the date of enactment.

On April 6, 1995, ATF published in the Federal Register a temporary rule (T.D. ATF-363, 60 FR 17446) implementing the provisions of the Act. These regulations implement the law by restricting the manufacture, transfer, and possession of certain semiautomatic assault weapons and large capacity ammunition feeding devices. Except as otherwise provided, the temporary regulations became effective upon the date of publication in the Federal Register.

On April 6, 1995, the Bureau also published a notice of proposed rulemaking cross-referenced to the temporary regulations (Notice No. 807, 60 FR 17494). The comment period for Notice No. 807 closed on July 5, 1995.

Large Capacity Ammunition Feeding Devices

The Act amended the GCA to create a new class of regulated items termed "large capacity ammunition feeding device." The Act defines the term "large capacity ammunition feeding device" to mean:

[A] magazine, belt, drum, feed strip, or similar device manufactured after the date of enactment of the [Act] that has the capacity of, or that can be readily restored or converted to accept more than 10 rounds of ammunition.

18 U.S.C. 921(a)(31).

The Act placed two new controls on these devices. First, it amended 18 U.S.C. 922 to make it unlawful, with certain exceptions, to transfer or possess a large capacity ammunition feeding device. 18 U.S.C. 922(w)(1). Second, the Act imposed a requirement on manufacturers and importers of the devices that they be marked with a serial number that clearly shows that the devices were manufactured after the date of enactment, and such other information as the Secretary may require by regulations. 18 U.S.C. 923(i).

There are two exceptions to the general prohibition on transfer and possession. The first is a "grandfather clause" that excepts the possession or transfer of large capacity ammunition feeding devices lawfully possessed on or before the date of enactment. 18 U.S.C. 922(w)(2). The second provides for, inter alia, the manufacture for, transfer to, or possession by governmental entities and law enforcement officers employed by such entities. 18 U.S.C. 922(w)(3)(A). Finally, the statute establishes rules for prosecuting a person charged with an unlawful transfer or possession of a device. If a person so charged asserts

that one of the two exceptions applies, the statute places the burden of proof on the Government and provides that the lack of a serial number is a presumption that the device is excepted. 18 U.S.C. 922(w)(4).

There are no exceptions to the marking requirements of section 923(i). The purpose of these temporary rules is to further implement the marking requirements of section 923(i). These temporary regulations are designed to ensure that only those imported devices manufactured after the date of enactment are subject to the marking requirements.

Importation of Devices Under Current Regulations

The current temporary regulations generally prohibit the importation of feeding devices with a capacity of more than 10 rounds after the date of enactment. ATF has to date interpreted the "grandfather clause" as applying only to such devices lawfully possessed in the United States on or before enactment. Thus, the only devices allowed to be imported were under the governmental use exception of section 922(w)(3). The current regulations require all devices imported after the date of enactment to be marked "RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY". 27 CFR 178.92.

This interpretation failed to account for the date in the statutory definition of "large capacity ammunition feeding device." The definition by its terms covers only devices manufactured after the date of enactment. Consequently, a device manufactured on or before the date of enactment is not a "large capacity ammunition feeding device" within the meaning of the statute, regardless of its size or capacity. Therefore, these pre-enactment items are simply not subject to the marking requirements or prohibition on transfer and possession.

Notice No. 807—Analysis of Comments—Large Capacity Ammunition Feeding Device Issue

ATF received 129 comments in response to Notice No. 807. Comments were submitted by Federal firearms licensees, nonlicensees, the medical profession, religious groups and other organizations (e.g., Presbyterian Church (USA), Violence Policy Center, Coalition to Stop Gun Violence, Handgun Control, Inc., and the National Rifle Association of America), and members of Congress.

Fifty-two commenters, representing 40 percent of the total comments received, objected to ATF's interpretation of the law as restricting

the importation of large capacity ammunition feeding devices after September 13, 1994, regardless of the date of manufacture of such devices. They also contended that the marking requirements prescribed in § 178.92(c) only apply to large capacity ammunition feeding devices manufactured after the effective date of the statute. Similar objections and arguments were raised in litigation challenging ATF's interpretation of the law.

Amendment of Regulations Concerning Imported Magazines

The difficulty ATF faces in enforcing the marking requirements of the statute is to identify those magazines manufactured after September 13, 1994, that are subject to the requirements. Although it is possible in some cases to determine the date of manufacture based on physical characteristics of particular magazines, in many cases pre-enactment magazines are physically identical to post-enactment magazines. It is impractical for the Government to conduct investigations abroad to determine the date of manufacture of these foreign magazines.

After analyzing the comments received and in light of the above-mentioned litigation, ATF has re-examined the Act and determined that feeding devices with a capacity of more than 10 rounds manufactured on or before September 13, 1994, are not subject to the restrictions of the law. However, in order to facilitate the importation of such devices, the regulations will require importers to provide certain evidence with their import applications. The applications must state that the devices are being imported for sale to government agencies or qualified law enforcement officers or present reasonable evidence that the devices were manufactured on or before September 13, 1994. Examples of acceptable evidence are listed in the regulations and include (1) permanent markings on the magazines or physical characteristics indicating the date of manufacture; and (2) certifications from the importer concerning the date of manufacture of the magazines, supported by reasonable documentary evidence, such as commercial records. Any one of these examples, which are not meant to be exhaustive, may be sufficient to establish the time of manufacture. Recognizing the legitimate business needs of the firearms industry in prompt action by ATF on import applications, the regulations will require the Director to act expeditiously on applications to import ammunition feeding devices.

ATF's authority to require importers to obtain import permits for ammunition feeding devices that were manufactured on or before September 13, 1994, and to require importers to submit evidence of the date of manufacture with the application for the import permit is based on 18 U.S.C. 926(a). This section provides that the Secretary may issue regulations necessary to carry out the provisions of the GCA.

The marking requirements of § 178.92(c) are also being revised to impose the marking requirements on persons who manufacture or import any large capacity ammunition feeding device manufactured after September 13, 1994. As indicated, the regulation currently imposes the marking requirements on all devices imported after September 13, 1994, regardless of the date of manufacture.

Finally, ATF is amending § 178.116 to provide for the conditional importation of an ammunition feeding device with a capacity of more than 10 rounds for the purpose of examining and testing such device in connection with the Bureau's determination as to whether the importation of such device will be authorized.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely implements the law and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

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 temporary rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public

procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512-0017, 1512-0018, and 1512-0019. The estimated average annual burden associated with the collections of information in this regulation is 6 minutes per respondent. For further information concerning the collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, refer to the preamble to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the Federal Register.

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

27 CFR Part 178—COMMERCE IN FIREARMS AND AMMUNITION 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).

§ 178.40a [Amended]

Par. 2. Section 178.40a(b)(1) is amended by removing the words "in the United States".

§ 178.57 [Amended]

Par. 3. Section 178.57(c) is amended by removing the words "or imported".

§ 178.92 [Amended]

Par. 4. Section 178.92 is amended by removing the words "or imported" in paragraphs (c)(1) and (c)(1)(iii).

Par. 5. Section 178.116 is revised to read as follows:

§ 178.116 Conditional importation.

The Director shall permit the conditional importation or bringing into the United States or any possession thereof of any firearm, firearm barrel, ammunition, or ammunition feeding

device as defined in § 178.119(b) for the purpose of examining and testing the firearm, firearm barrel, ammunition, or ammunition feeding device in connection with making a determination as to whether the importation or bringing in of such firearm, firearm barrel, ammunition, or ammunition feeding device will be authorized under this part. An application on ATF Form 6 for such conditional importation shall be filed, in duplicate, with the Director. The Director may impose conditions upon any importation under this section including a requirement that the firearm, firearm barrel, ammunition, or ammunition feeding device be shipped directly from Customs custody to the Director and that the person importing or bringing in the firearm, firearm barrel, ammunition, or ammunition feeding device must agree to either export the firearm, firearm barrel, ammunition, or ammunition feeding device or destroy same if a determination is made that the firearm, firearm barrel, ammunition, or ammunition feeding device may not be imported or brought in under this part. A firearm, firearm barrel, ammunition, or ammunition feeding device imported or brought into the United States or any possession thereof under the provisions of this section shall be released from Customs custody upon the payment of customs duties, if applicable, and in the manner prescribed in the conditional authorization issued by the Director.

Par. 6. Section 178.119 is revised to read as follows:

§ 178.119 Importation of ammunition feeding devices.

(a) No ammunition feeding device shall be imported or brought into the United States unless the Director has authorized the importation of such device.

(b) For purposes of this section, an "ammunition feeding device" is a magazine, belt, drum, feed strip, or similar device for a firearm that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition, or a fixed device for a manually operated firearm, or a fixed device for a firearm listed in 18 U.S.C. 922, Appendix A.

(c) An application for a permit, ATF Form 6, to import or bring an ammunition feeding device into the United States or a possession thereof under this section shall be filed, in

triplicate, with the Director. The application shall contain:

- (1) The name and address of the person importing the device,
- (2) A description of the device to be imported, including type and cartridge capacity, model and caliber of firearm for which the device was made, country of manufacture, and name of the manufacturer if known,
- (3) The unit cost of the device to be imported,
- (4) The country from which to be imported,
- (5) The name and address of the foreign seller and the foreign shipper,
- (6) Verification that such device will be marked as required by this part, and
- (7) A statement by the importer that the device is being imported for sale to purchasers specified in § 178.40a(b) or physical or reasonable documentary evidence establishing that the magazine was manufactured on or before September 13, 1994. Any one of the following examples, which are not meant to be exhaustive, may be sufficient to establish the time of manufacture:
 - (i) Permanent markings or physical characteristics which establish that the magazine was manufactured on or before September 13, 1994;
 - (ii) A certification from the importer, under penalty of perjury, that the importer maintained continuous custody beginning on a date prior to September 14, 1994, and continuing until the date of the certification. Such certification shall also be supported by reasonable documentary evidence, such as commercial records;
 - (iii) A certification from the importer, under penalty of perjury, that the magazines sought to be imported were in the custody and control of a foreign Government on or before September 13, 1994, along with reasonable documentary evidence to support the certification; or
 - (iv) A certification from the importer, under penalty of perjury, that the magazine was in the possession of a foreign arms supplier on or before September 13, 1994, along with reasonable documentary evidence to support the certification.

(d) The Director shall act upon applications to import ammunition feeding devices as expeditiously as possible. If the Director approves the application, such approved application shall serve as the permit to import the device described therein, and importation of such devices may continue to be made by the person importing such devices under the approved application (permit) during the period specified thereon. The

Director shall furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use. If the Director disapproves the application, the person importing such devices shall be notified of the basis for the disapproval.

(e) An ammunition feeding device imported or brought into the United States by a person importing such a device may be released from Customs custody to the person importing such a device upon showing that such person has obtained a permit from the Director for the importation of the device to be released. In obtaining the release from Customs custody of such a device authorized by this section to be imported through use of a permit, the person importing such a device shall prepare ATF Form 6A, in duplicate, and furnish the original ATF Form 6A to the Customs officer releasing the device. The Customs officer shall, after certification, forward the ATF Form 6A to the address specified on the form. The ATF Form 6A shall show the name and address of the person importing the device, the name of the manufacturer of the device, the country of manufacture, the type, model, caliber, size, and the number of devices released.

(f) Within 15 days of the date of release from Customs custody, the person importing such a device shall:

(1) Forward to the address specified on the form a copy of ATF Form 6A on which shall be reported any error or discrepancy appearing on the ATF Form 6A certified by Customs, and

(2) Pursuant to § 178.92, place all required identification data on each imported device manufactured after September 13, 1994, if same did not bear such identification data at the time of its release from Customs custody.

(g) The Director may authorize the conditional importation of an ammunition feeding device as provided in § 178.116.

(Paragraphs (a), (c), and (d) approved by the Office of Management and Budget under control numbers 1512-0017 and 1512-0018; paragraphs (e) and (f) approved by the Office of Management and Budget under control number 1512-0019)

Signed: March 18, 1996.
Bradley A. Buckles,
Acting Director.

Approved: June 19, 1996.
John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

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