

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-402; Ref: Notice No. 855]

RIN 1512-AB68

Posting of Signs and Written Notification to Purchasers of
Handguns

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

ACTION: Final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending
the firearms regulations to require that signs be posted on the
premises of Federal firearms licensees and that written notification be
issued with each handgun sold advising of the provisions of the Youth
Handgun Safety Act.

EFFECTIVE DATE: September 11, 1998.

FOR FURTHER INFORMATION CONTACT: Marsha D. Baker, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-927-8210).

SUPPLEMENTARY INFORMATION:

Background

The Youth Handgun Safety Act (YHSA), 18 U.S.C. 922(x), generally makes it unlawful for a person to transfer a handgun to anyone under 18 years of age or for anyone under 18 years of age to knowingly possess a handgun. Certain exceptions are set forth in the statute.

In enacting the YHSA in 1994, Congress found that criminal misuse of firearms often starts with the easy availability of guns to juvenile gang members. In addition, Congress found that individual States and localities may find it difficult to control this problem by themselves. Therefore, Congress found it necessary and appropriate to assist the States in controlling violent crime by stopping the commerce in handguns with juveniles nationwide and allowing the possession of handguns by juveniles only when handguns are possessed and used under certain limited circumstances.

In a memorandum to the Secretary of the Treasury dated June 11, 1997, the President stated that a major problem in our nation is the ease with which young people gain illegal access to guns. The President observed that firearms are now responsible for 12 percent of fatalities among American children and teenagers.

The President's memorandum directed the Secretary of the Treasury to propose regulations that would require the posting of signs and

issuance of written notices warning handgun purchasers of the provisions of the YHSA.

Notice of Proposed Rulemaking

In response to the concerns raised by the President's memorandum, ATF published Notice No. 855 in the Federal Register (62 FR 45364) on August 27, 1997. To enforce the provisions of the YHSA and to ensure that handgun purchasers are familiar with its provisions, the Notice of Proposed Rulemaking (NPRM) proposed regulations requiring that signs be posted on the premises of Federal firearms licensees and that written notification be issued by licensees to nonlicensed handgun purchasers warning as follows:

(1) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18;

(2) A violation of the prohibition against transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison;

(3) Handguns are a leading contributor to juvenile violence and fatalities; and

(4) Safely storing and locking handguns away from children can help ensure compliance with Federal law.

The proposed rule stipulated that signs provided by ATF must be posted by licensed importers, manufacturers and dealers on their

licensed premises where prospective handgun purchasers can readily see them. In addition, the written notification to be issued to each handgun purchaser must be made available either by providing the purchaser with an ATF Publication or some other type of written notification that contains the same language, e.g., a manufacturer's or importer's instruction manual or brochure provided to the handgun purchaser.

Analysis of Comments

ATF received sixty-two (62) comments during the comment period in response to Notice No. 855. These comments were received from fifty-three (53) members of the public, one (1) Member of Congress, four (4) Federal firearms licensees (FFLs), and four (4) firearms industry organizations. Five (5) of the respondents were in agreement with the proposed regulations. Fifty-seven (57) respondents opposed certain provisions of the proposed regulations.

Comments in Support of the Proposed Rule

The American Academy of Pediatrics (AAP) commented in favor of the proposed regulations. The AAP stated that "Firearms play a major role in childhood morbidity and mortality in the United States." They went on to comment that "the surest way to reduce the effects of firearm-trauma on children is to remove handguns from the environments in which children live and play." The Academy also supported the inclusion of curios and relics in the proposed rule as well as the notification at the time that weapons are returned to their owners by an FFL (for

example, when a firearm is redeemed from pawn).

Handgun Control Inc. (HCI) also commented in support of the proposed regulations. They agreed that ATF had the authority to issue regulations necessary to implement the Gun Control Act (GCA). They stated that ``notification to handgun buyers at the point of purchase of the need to safely secure handguns away from children is certainly necessary to implement the provisions of the statute."

HCI suggested that the written notice provided to the purchasers of handguns not be included as part of a larger Federal form, but should instead be separately contained in one publication. In response to this comment, it should be noted that the NPRM did not specify the publication number of the proposed required written notice since one had not yet been assigned. However, the final rule clarifies that the written notice will appear on an ATF publication (ATF I 5300.2) that is separate from any existing ATF form.

Seven (7) additional respondents agreed with the general purpose of the proposed regulations; to reduce the ease with which juveniles have access to handguns which are then used to commit crimes or which result in youth fatalities. However, they were opposed to the wording of the provisions outlined in the proposed rule. Rephrasing of the provisional language and certain deletions were suggested.

For example, Sturm, Ruger & Company, Inc., a manufacturer of firearms, commented that ``while we have no objection to reminding dealers of their serious responsibilities regarding sales of firearms to unauthorized persons, the proposed language goes far beyond that." Accordingly, they suggested several revisions of the proposed regulations. The suggested revisions to the language of the notice and sign will be discussed in detail below.

Comments in Opposition to the Proposed Rule

Several commenters challenged ATF's authority under the GCA to require any sort of warning or notification to purchasers of handguns regarding the requirements of the YHSA. A comment from Rep. John Dingell urged ATF to withdraw the proposed rule for several reasons, including his view that the statutory basis for ATF's action is ``uncertain." He noted that ATF has not required notices or signs to warn purchasers about other GCA provisions and the statutory prohibitions on the possession of firearms by certain categories of people, including felons.

ATF does not agree that requiring licensees to inform prospective handgun purchasers about the requirements of the law goes beyond its authority to enforce the GCA. Furthermore, this type of requirement is not unprecedented. While ATF has not required licensees to post signs or hand out notices regarding other GCA provisions, many of these provisions are made known to purchasers through other means. For example, licensees are required to have unlicensed purchasers complete an ATF Form 4473, Firearms Transaction Record. On this form, purchasers certify that they do not fall within one of the categories of persons prohibited from purchasing a firearm. The Form 4473 contains a detailed explanation of various GCA provisions.

ATF believes that it is important to advise handgun purchasers of the still relatively new requirements of the YHSA to ensure that adult purchasers who are purchasing a handgun from a licensee are made aware

that it is unlawful to transfer handguns to juveniles. This statutory provision is not addressed on the Form 4473. ATF believes that the final rule will accomplish the goal of preventing inadvertent violations of the law without unduly burdening licensees or handgun purchasers. Furthermore, ATF's statutory authority to issue regulations to implement the GCA is clear. See 18 U.S.C. 926(a).

Revisions Made in Response to Comments

After carefully considering the comments received following the publication of the NPRM, ATF has decided that certain revisions should be made to the written notification and sign required by the regulations. These modifications are discussed in more detail below.

In reference to the first paragraph of the proposed notice and sign, forty-seven (47) commenters suggested that the language was vague and that the sign Federal firearms licensees would be required to post, as well as the written notification, should accurately explain the exceptions included in the YHSA that would allow the lawful transfer to, or possession by, an individual under the age of 18 years. For example, the Sporting Arms and Ammunition Manufacturers' Institute (SAAMI) suggested that this item should "include a thorough, accurate and objective explanation of these circumstances and/or include the language of the statute itself." The National Rifle Association (NRA) commented that "[a]t the very least, the entire text of the law should be given, especially outlining the full text of these exceptions * *

*"

ATF recognizes that there are exceptions listed in the YHSA that allow persons under 18 years of age to receive and possess a handgun,

and the proposed language referred to these limited circumstances. However, ATF believes that a detailed discussion of the exceptions would have been too long to include in the notice and sign.

Nonetheless, ATF agrees with the respondents who suggested that the proposed language of the notice and sign might raise questions in the minds of purchasers as to when it was lawful for a juvenile to possess a handgun.

Accordingly, ATF is adopting the suggestion of those commenters who advocated that the written notification set forth the entire language of the statute. The final rule provides that the required written notification (ATF I 5300.2) will include the complete language of the statutory provision appearing at 18 U.S.C. section 922(x), including the exceptions. Owing to the length of this statutory language, the sign will merely refer the purchaser to the ATF I 5300.2 for the complete provisions of the law. The sign will also advise the public that a copy of this publication may be obtained from the licensee posting the sign or from the ATF Distribution Center.

In reference to the second provision of the notice and sign, forty-three (43) of the respondents again stated that the language was vague and that the sign and written notification should more specifically set forth the exceptions included in the YHSA that would allow the lawful possession of a handgun by a juvenile in certain limited circumstances. In addition, four (4) respondents stated that the reference to the maximum penalty provided by law for a violation of section 922(x) was misleading, since the maximum penalty only applied in limited circumstances.

As previously noted, the final rule provides that the written notification will contain the entire language of section 922(x), so

that interested handgun purchasers may read for themselves the exceptions outlined in the statute. ATF has also included in the written notification the full text of the penalty provision set forth in 18 U.S.C. 924(a)(6) for violations of section 922(x). Again, the sign will refer the purchaser to the complete language of the law as outlined in the written notification. We believe that this will ensure that purchasers of handguns receive complete and accurate information as to the statutory penalties imposed on violations of section 922(x).

The NRA noted that the proposed regulations do not mention the statutory restrictions on the transfer to juveniles and use by juveniles of ammunition that is suitable only in a handgun. As noted previously, the entire provisions of the law will be set forth in the written notification. This includes the statutory provisions regarding handgun ammunition.

In reference to the third provision of the proposed regulations, seventeen (17) respondents opposed the inclusion of the language that ``handguns are a leading contributor to juvenile violence and fatalities." Another fifteen (15) stated that this provision should be deleted entirely. Many commenters suggested that the entire statement offered value judgments, and argued that it was the perpetrators of the shooting, not the handguns used in the shooting, that contributed to juvenile violence and fatalities.

The proposed language was not intended to convey the message that handguns alone are responsible for juvenile violence. In fact the language noted that handguns were a ``contributor" to juvenile violence. However, ATF agrees with the commenters who suggested that this provision could be clarified. For example, Sturm, Ruger & Company suggested that the language be modified to refer to the misuse of

illegally possessed firearms. ATF has partially adopted this comment. As set forth in the final rule, this provision now states that ``The misuse of handguns is a leading contributor to juvenile violence and fatalities."`

In reference to the fourth and final provision of the proposed statement, fifteen (15) of the respondents believed that it was unnecessary to have safety warning notices for firearms. Another twelve (12) stated that this provision should be deleted entirely.

Many of the commenters noted that there is no Federal law mandating a specific type of storage or locking requirement for handguns. For example,

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the NRA commented that ``the proposed warning concerning the safe storage and locking of handguns is not only superfluous, but also implies that there is a Federal law requiring these safety measures."`

However, some comments supported the inclusion of a generic statement encouraging the safe storing and securing of firearms in order to prevent accidents. For example, SAAMI stated that they would support the ``[i]nclusion of a statement that safely storing and securing firearms can prevent accidents."` On the other hand, HCI suggested that the notice be revised to more explicitly state what is meant by ``safely storing and locking handguns away from children."`

ATF does not agree that the original proposed language implied that there was a Federal law requiring that handguns be stored or locked in a particular fashion. However, in response to the comments received on this issue, the final rule modifies the language of this provision to

state that ``Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives." This statement encourages handgun owners to ensure compliance with the law as well as to promote general gun safety.

Finally, the order of the four provisions has been rearranged for purposes of clarity. The revised language of the sign and notice is reflected in the regulations portion of this Treasury Decision.

Regulatory Flexibility Act

It is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities. The notices and signs that are required in this document will be provided free of charge by the Federal Government to Federal firearms licensees. Licensees may choose to provide the required written notice in another format; however, they always have the option of using the notices provided by ATF. Moreover, the new requirements relating to the posting of signs and the distribution of notices will place only a minimal burden on firearms licensees. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this regulation is not subject to the analysis required by this

Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no new reporting or recordkeeping requirements are imposed.

List of Subjects in 27 CFR Part 178

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

Authority and Issuance

PART 178--[AMENDED]

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).

Par. 2. Section 178.103 is added to Subpart F to read as follows:

Sec. 178.103 Posting of signs and written notification to purchasers of handguns.

(a) Each licensed importer, manufacturer, dealer, or collector who delivers a handgun to a nonlicensee shall provide such nonlicensee with written notification as described in paragraph (b) of this section.

(b) The written notification (ATF I 5300.2) required by paragraph (a) of this section shall state as follows:

(1) The misuse of handguns is a leading contributor to juvenile violence and fatalities.

(2) Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives.

(3) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18.

(4) A knowing violation of the prohibition against selling, delivering, or otherwise transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison.

FEDERAL LAW

The Gun Control Act of 1968, 18 U.S.C. Chapter 44, provides in pertinent part as follows:

18 U.S.C. 922(x)

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to--

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile--

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from

possessing a firearm, except--

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i) a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State, or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to

permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the

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Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

18 U.S.C. 924(a)(6)

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if--

(I) the offense of which the juvenile is charged is possession

of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)--

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(c) This written notification shall be delivered to the nonlicensee on ATF I 5300.2, or in the alternative, the same written notification may be delivered to the nonlicensee on another type of written notification, such as a manufacturer's or importer's brochure accompanying the handgun; a manufacturer's or importer's operational manual accompanying the handgun; or a sales receipt or invoice applied to the handgun package or container delivered to a nonlicensee. Any written notification delivered to a nonlicensee other than on ATF I 5300.2 shall include the language set forth in paragraph (b) of this section in its entirety. Any written notification other than ATF I

5300.2 shall be legible, clear, and conspicuous, and the required language shall appear in type size no smaller than 10-point type.

(d) Except as provided in paragraph (f) of this section, each licensed importer, manufacturer, or dealer who delivers a handgun to a nonlicensee shall display at its licensed premises (including temporary business locations at gun shows) a sign as described in paragraph (e) of this section. The sign shall be displayed where customers can readily see it. Licensed importers, manufacturers, and dealers will be provided with such signs by ATF. Replacement signs may be requested from the ATF Distribution Center.

(e) The sign (ATF I 5300.1) required by paragraph (d) of this section shall state as follows:

(1) The misuse of handguns is a leading contributor to juvenile violence and fatalities.

(2) Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives.

(3) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18.

(4) A knowing violation of the prohibition against selling, delivering, or otherwise transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison.

Note: ATF I 5300.2 provides the complete language of the

statutory prohibitions and exceptions provided in 18 U.S.C. 922(x) and the penalty provisions of 18 U.S.C. 924(a)(6). The Federal firearms licensee posting this sign will provide you with a copy of this publication upon request. Requests for additional copies of ATF I 5300.2 should be mailed to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950.

(f) The sign required by paragraph (d) of this section need not be posted on the premises of any licensed importer, manufacturer, or dealer whose only dispositions of handguns to nonlicensees are to nonlicensees who do not appear at the licensed premises and the dispositions otherwise comply with the provisions of this part.

Signed: May 28, 1998.

John W. Magaw,
Director.

Approved: June 6, 1998.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

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