made in accordance with applicable revenue procedures or publications (see § 601.601(d)(2)(ii)(*b*) of this chapter). Pursuant to these procedures, a request for waiver should be filed at least 45 days before the due date of the information return in order for the Service to have adequate time to respond to the request for waiver. The waiver will specify the type of information return and the period to which it applies and will be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner.

(ii) The Commissioner may prescribe rules that supplement the provisions of paragraph (c)(2)(i) of this section.

(d) *Paper form returns.* Returns submitted on paper forms (whether or not machine-readable) permitted under paragraph (c) of this section shall be in accordance with applicable Internal Revenue Service or Social Security Administration procedures.

* * * * *

(f) *Failure to file.* If a person fails to file an information return on magnetic media when required to do so by this section, the person is deemed to have failed to file the return. In addition, if a person making returns on a paper form under paragraph (c) of this section fails to file a return on machine-readable paper form when required to do so by this section, the person is deemed to have failed to file the return. See sections 6652, 6693, and 6721 for penalties for failure to file certain returns. See also section 6724 and the regulations under section 6721 for the specific rules and limitations regarding the penalty imposed under section 6721 for failure to file on magnetic media.

(g) *Effective dates.* * * *

(2) Paragraphs (a)(1), (b)(1), (b)(2), (c)(1)(i), (c)(1)(iii), (c)(1)(iv), (c)(2), (d), (e), and (f) of this section are effective for information returns required to be filed after December 31, 1996. For information returns required to be filed after December 31, 1989, and before January 1, 1997, see section 6011(e).

§ 301.6011–2T [Removed].

Par. 7. Section 301.6011–2T is removed.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: May 22, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–16411 Filed 6–29–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

(T.D. ATF–401; Ref: Notice No. 862)

RIN: 1512–AB64

Implementation of Public Law 104208, Omnibus Consolidated Appropriations Act of 1997 (96R–034P)

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

ACTION: Temporary Rule (Treasury decision).

SUMMARY: This temporary rule implements the provisions of Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, which amended the Gun Control Act of 1968. Specifically, the new law makes it unlawful for individuals who have been convicted of a ''misdemeanor crime of domestic violence'' to ship, transport, receive or possess firearms and ammunition, and prohibits sales or other dispositions of firearms and ammunition to such individuals. Further, the law requires individuals acquiring handguns from Federal firearms licensees under the Brady law to certify that they have not been convicted of such a crime. Additionally, it allows all Federal firearms licensees to engage in the business of dealing in curio or relic firearms with another licensee away from their licensed premises. This 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 DATE: The temporary regulations are effective June 30, 1998.

ADDRESS: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221.

FOR FURTHER INFORMATION CONTACT: Barry Fields, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW, Washington, DC 20226; (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1996, The Omnibus Consolidated Appropriations Act of 1997 (hereinafter, ''the Act''), Pub. L. 104–208 (110 Stat. 3009), was enacted. The Act amended the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44. The amendments became effective upon the date of enactment. The new statutory provisions and the regulation changes necessitated by the Act are as follows:

(1) *Misdemeanor crime of domestic violence.* The Act amended 18 U.S.C. 922(g) to make it unlawful for any person convicted of a ''misdemeanor crime of domestic violence'' to ship, transport, possess, or receive in or affecting commerce firearms or ammunition. It also amended 18 U.S.C. 922(d) to make it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor.

As defined in the GCA, a ''misdemeanor crime of domestic violence'' means an offense that: (1) Is a misdemeanor under Federal or State law; (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and (3) was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes any offense that is classified as a misdemeanor under Federal or State law. (An example of a Federal misdemeanor is a conviction in an Indian Court established pursuant to 25 CFR part 11. Misdemeanor convictions in other Indian courts are not Federal misdemeanors because these courts are not considered Federal or State courts.) In addition, in States that do not classify offenses as misdemeanors, the definition includes any State or local offense punishable by imprisonment for a term of one year or less.

Accordingly, if State A has an offense classified as a State ''domestic violence misdemeanor'' that is punishable by up to five years imprisonment, it would be a misdemeanor crime of domestic violence as defined in the GCA.

If State B does not characterize offenses as misdemeanors, but has a domestic violence offense that is punishable by no more than one year imprisonment, this offense would be a misdemeanor crime of domestic violence as defined in the GCA. Therefore, a person convicted of such an offense would be subject to firearms disabilities under 18 U.S.C. 922(g)(9).

Moreover, the definition includes offenses that are punishable only by a fine, as well as offenses that are punishable by a term of imprisonment. Nothing in the language of the statute limits the term misdemeanor crime of domestic violence to offenses punishable by imprisonment. The legislative history of the statute illustrates that the prohibition on firearm possession by persons convicted of such offenses was to be as broad as possible, for example, covering individuals who plead guilty to minor offenses.

The prohibition also applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer lawfully possess a firearm or ammunition.

Whether a person has been ''convicted'' of a misdemeanor crime of domestic violence is determined by the law of the jurisdiction where the proceedings were held. In addition, a conviction would not be disabling if it has been expunged, set aside, pardoned, or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights upon conviction for such an offense) *AND* the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

In addition, a person shall not be considered to have been convicted of such an offense, unless (1) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel; and (2) if the person was entitled to a jury trial, the case was tried by a jury or the person knowingly and intelligently waived the right to a jury trial by guilty plea or otherwise.

The definition of misdemeanor crime of domestic violence includes all offenses that have as an element the use or attempted use of physical force (*e.g.*, assault and battery) if the offense is committed by one of the defined parties. This is true whether or not the State statute specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault and battery against his or her spouse would be prohibited from receiving or possessing firearms or ammunition.

A misdemeanor crime of domestic violence includes an offense that is committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

The statute does not define the phrase ''a person who is cohabiting with the victim as a spouse'' or a ''person similarly situated to a spouse.'' ''Cohabit'' is commonly defined as ''to live together as husband and wife, especially when not legally married.'' Webster's New World Dictionary of the American Language, 2nd College Edition, 1974. Therefore, for purposes of these regulations the phrase ''cohabiting as a spouse'' means two persons living together in an intimate relationship who hold themselves out as husband and wife.

Further, the regulations interpret the phrase ''similarly situated to a spouse'' to mean two persons who share the same domicile in an intimate relationship. A ''domicile'' is defined as ''one's fixed place of dwelling, where one intends to reside more or less permanently.'' Webster's New World Dictionary of the American Language, 2nd College Edition, 1974. Unlike persons ''cohabiting with a spouse,'' persons ''similarly situated'' do not necessarily have to hold themselves out as husband and wife.

The regulation also implements the Act's amendments to 18 U.S.C. 922(s) to require individuals who intend to acquire handguns from licensees to state on the Brady Form, ATF Form 5300.35, whether they have been convicted of a ''misdemeanor crime of domestic violence.''

Prior to the Act, employees of government agencies with firearms disabilities were allowed to receive and possess firearms for official duties under the exemption in 18 U.S.C. 925(a)(1). However, the Act amended section 925(a)(1) to prohibit the possession of firearms and ammunition by any individual convicted of a misdemeanor crime of domestic violence. Accordingly, the regulations provide that employees of government agencies convicted of disqualifying misdemeanors would not be exempt from this new disability with respect to their receipt or possession of firearms or ammunition. Thus, law enforcement officers and other government officials who have been convicted of a disqualifying misdemeanor may not lawfully possess or receive firearms or ammunition for any purpose, including performance of their official duties. This disability applies to firearms and ammunition issued by government agencies, firearms and ammunition purchased by government employees for use in performing their official duties, and government employees' personal firearms and ammunition.

The regulations are also being amended to provide that dealers may continue to sell firearms to law enforcement officers, including out-of-State officers, for official use without requiring them to fill out a Form 4473 or a Form 5300.35. Prior to the Act, law enforcement officers could establish their exemption from these requirements if they presented a certification letter on their agency's letterhead, signed by a person in authority within the agency, and stating that the firearm would be used in the performance of official duties. This procedure is now being incorporated into the regulations.

To ensure that law enforcement officers who purchase firearms for official use are not subject to the misdemeanor crime of domestic violence disability, the regulations provide that the certification letter must also state that a records check does not disclose any convictions of the officer for a misdemeanor crime of domestic violence. This new requirement allows for an effective method of determining whether the officer is prohibited from purchasing firearms and provides safeguards equivalent to those afforded by the Form 4473 and Form 5300.35. Disposition of the firearm to the officer must still be entered into the licensee's permanent records and the certification letter must be retained in the licensee's files.

(2) *Disposition of Curio or Relic Firearms by Licensed Importers, Manufacturers, and Dealers Away From Their Licensed Premises.* The Act amended 18 U.S.C. 923(j) to allow licensed importers, manufacturers, and dealers to engage in the business of selling or transferring curio or relic firearms to other licensees away from their licensed premises. Prior to the amendment, licensed importers, manufacturers, and dealers were restricted to conducting business from their licensed premises and temporarily at gun shows away from the licensed premises if the gun show was in the same State as that specified on the license. The regulation at § 178.50 is being amended to reflect this amendment. In addition, § 178.100 is being amended to require licensees to record in their acquisition and disposition records the location of the sale or disposition.

Licensed importers, manufacturers, and dealers are still subject to all recordkeeping requirements in the

regulations concerning the sale or other disposition of curios or relics.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined in E.O. 12866, because any 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 collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512–0520. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this regulation is in §§ 178.130(a)(1) and 178.134. This information is required to prevent the purchase of handguns by persons convicted of a misdemeanor crime of domestic violence. The likely respondents are individuals.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Drafting Information: The author of this document is Barry Fields, Regulations Division, 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, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

27 CFR part 178 is amended as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

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

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

Par. 2. Section 178.1(a) is revised to read as follows:

§ 178.1 Scope of regulations.

(a) *General.* The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated to implement Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766), Pub. L. 99–408 (100 Stat. 920), Pub. L. 103–159 (107 Stat. 1536), Pub. L. 103–322 (108 Stat. 1796), and Pub. L. 104–208 (110 Stat. 3009).

* * * * *

Par. 3. Section 178.11 is amended by adding the definition for ''misdemeanor crime of domestic violence'' to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Misdemeanor crime of domestic violence. (a) Is a Federal, State or local offense that:

(1) Is a misdemeanor under Federal or State law or, in States which do not classify offenses as misdemeanors, is an offense punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine. (This is true whether or not the State statute specifically defines the offense as a ''misdemeanor'' or as a ''misdemeanor crime of domestic violence.'' The term includes all such misdemeanor convictions in Indian Courts established pursuant to 25 CFR part 11.);

(2) Has, as an element, the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon; and

(3) Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, (e.g., the equivalent of a ''common law'' marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home would be similarly situated to a spouse).

(b) A person shall not be considered to have been convicted of such an offense for purposes of this part unless:

(1) The person is considered to have been convicted by the jurisdiction in which the proceedings were held.

(2) The person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(3) In the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(i) The case was tried by a jury, or

(ii) The person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(c) A person shall not be considered to have been convicted of such an offense for purposes of this part if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense) unless the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

* * * * *

Par. 4. Section 178.32 is amended by removing the word ''or'' at the end of paragraph (a)(7), by removing the period at the end of paragraph (a)(8)(iii)(B) and adding in its place '', or'', by removing the word ''or'' at the end of paragraph (d)(7), by removing the period at the end

of paragraph (d)(8)(ii)(B) and adding in its place ‘‘, or’’, and by adding new paragraphs (a)(9) and (d)(9) to read as follows:

§ 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

(a) * * *

(9) Has been convicted of a misdemeanor crime of domestic violence.

* * * * *

(d) * * *

(9) Has been convicted of a misdemeanor crime of domestic violence.

Par. 5. Section 178.50 is amended by removing the word ‘‘or’’ at the end of paragraph (b), by removing the period at the end of paragraph (c) and adding in its place ‘‘; or’’, and by adding new paragraph (d) to read as follows:

§ 178.50 Locations covered by license.

* * * * *

(d) A licensed importer, manufacturer, or dealer may engage in the business of dealing in curio or relic firearms with another licensee at any location pursuant to the provisions of § 178.100.

Par. 6. Section 178.99 is amended by removing the word ‘‘or’’ at the end of paragraph (c)(7), by removing the period at the end of paragraph (c)(8)(ii)(B) and adding in its place ‘‘, or’’, and by adding new paragraph (c)(9) to read as follows:

§ 178.99 Certain prohibited sales or deliveries.

* * * * *

(c) * * *

(9) Has been convicted of a misdemeanor crime of domestic violence.

* * * * *

Par. 7. Section 178.100 is amended by redesignating paragraph (a) as (a)(1), by adding new paragraph (a)(2), and by revising paragraph (c) to read as follows:

§ 178.100 Conduct of business away from licensed premises.

(a)(1) * * *

(2) A licensed importer, manufacturer, or dealer may engage in the business of dealing in curio or relic firearms with another licensee at any location.

* * * * *

(c) Licensees conducting business at locations other than the premises specified on their license under the provisions of paragraph (a) of this section shall maintain firearms records in the form and manner prescribed by Subpart H of this part. In addition, records of firearms transactions conducted at such locations shall include the location of the sale or other disposition, be entered in the acquisition and disposition records of the licensee, and retained on the premises specified on the license.

Par. 8. Section 178.130(a)(1) is amended by revising the last sentence to read as follows:

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

(a)(1) * * * 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; is not a person who, having been a citizen of the United States, has renounced such citizenship; and has not been convicted of a misdemeanor crime of domestic violence.

* * * * *

Par. 9. Section 178.134 is added to Subpart H to read as follows:

§ 178.134 Sale of firearms to law enforcement officers.

(a) Law enforcement officers purchasing firearms for official use who provide the licensee with a certification on agency letterhead, signed by a person in authority within the agency (other than the officer purchasing the firearm), stating that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence are not required to complete Form 4473 or Form 5300.35. The law enforcement officer purchasing the firearm may purchase a firearm from a licensee in another State, regardless of where the officer resides or where the agency is located.

(b)(1) The following individuals are considered to have sufficient authority to certify that law enforcement officers purchasing firearms will use the firearms in the performance of official duties:

(i) In a city or county police department, the director of public safety or the chief or commissioner of police.

(ii) In a sheriff’s office, the sheriff.

(iii) In a State police or highway patrol department, the superintendent or the supervisor in charge of the office to which the State officer or employee is assigned.

(iv) In Federal law enforcement offices, the supervisor in charge of the office to which the Federal officer or employee is assigned.

(2) An individual signing on behalf of the person in authority is acceptable, provided there is a proper delegation of authority.

(c) Licensees are not required to prepare a Form 4473 or Form 5300.35 covering sales of firearm made in accordance with paragraph (a) of this section to law enforcement officers for official use. However, disposition to the officer must be entered into the licensee’s permanent records, and the certification letter must be retained in the licensee’s files.

Par. 10. Section 178.141 is amended by revising the introductory text to read as follows:

§ 178.141 General.

With the exception of §§ 178.32(a)(9) and (d)(9) and 178.99(c)(9), the provisions of this part shall not apply with respect to:

* * * * *

Par. 11. Section 178.144 is amended by removing the word ‘‘and’’ at the end of paragraph (c)(6), by removing the period at the end of paragraph (c)(7) and by adding in its place ‘‘; and’’, and by adding paragraph (c)(8) to read as follows:

§ 178.144 Relief from disabilities under the Act.

* * * * *

(c) * * *

(8) In the case of an applicant who has been convicted of a misdemeanor crime of domestic violence, a copy of the indictment or information on which the applicant was convicted, the judgment of conviction or record of any plea of nolo contendere or plea of guilty or finding of guilt by the court, and any pardon, expunction, setting aside or other record purporting to show that the conviction was rendered nugatory or that civil rights were restored.

* * * * *

Signed: February 18, 1998.

John W. Magaw,

Director.

Approved: April 24, 1998.

John P. Simpson,

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

[FR Doc. 98–17288 Filed 6–29–98; 8:45 am]

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