

QUARTERLY BULLETIN

Bureau of Alcohol,

Tobacco and

Firearms

Department of the Treasury

CONTAINS:

**Treasury Decisions, Rulings,
and**

Procedural and Administrative

Matters Concerning Alcohol,

Tobacco, Firearms,

and Explosives

NOTE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Office of Compliance Operations, Washington, DC 20226.

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Preface

The Alcohol, Tobacco and Firearms Quarterly Bulletin is the authoritative instrument of the Bureau for announcing official rulings and procedures, and for publishing Treasury decisions, legislation, administrative matters, and other items of general interest. It incorporates, into one publication, matters of the Bureau, which are of public record.

The Bureau publishes rulings and procedures to promote uniform application of the laws and regulations it administers. Rulings interpret the requirements of laws and regulations and apply retroactively unless otherwise indicated; whereas, procedures establish methods for performing operations to comply with such law and regulations.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department regulations but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

Definitions

Rulings and procedures

that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used

in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth in the new ruling. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified.

CLARIFIED is used

in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE

is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in

a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in

a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

SUPERSEDED is used

in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both

the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statues and regulations (e.g. the 1939 Code²⁶ CFR Part 225) may be reissued under the current statues and regulations (e.g. the 1954 Code²⁷ CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS:

The following abbreviations appear in material published in the Bulletin:

A, B, C, etc. ²⁸ The name of individuals

ATF ²⁹ Bureau of Alcohol, Tobacco and Firearms

ATFQB ³⁰ Alcohol, Tobacco and Firearms Quarterly Bulletin

ATF Proc. ³¹ ATF Procedure

ATF Rul. ³² ATF Ruling

C.B. ³³ Cumulative Bulletin

Ct.D. ☐ Court Decision

CFR ☐ Code of Federal Regulations

D.O. ☐ Delegation Order

E.O. ☐ Executive Order

FAA Act ☐ Federal Alcohol Administration Act

F.R. ☐ Federal Register

M, N, X, Y, Z, etc. ☐ The names of corporations, places and businesses, according to context

Pub. L. ☐ Public Law

Rev. Proc. ☐ Revenue Procedure

Rev. Rul. ☐ Revenue Ruling

Stat. ☐ Statutes at Large

T.D. ☐ Treasury Decision

T.D.O. ☐ Treasury Department Order

U.S.C. ☐ United States Code

X and Y ☐ used to represent certain number and when used with the word ☐dollars☐ represent sums of money

Subpart A-ALCOHOL

TITLE 27 ☐ ALCOHOL, TOBACCO PRODUCTS AND FIREARMS ☐
CHAPTER I ☐ BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT
OF THE TREASURY

**Implementation of Public Law 105-34,
Sections 908, 910 and 1415,**

**Related to Hard Cider, Semi-Generic Wine
Designations, and Wholesale**

Liquor Dealers' Signs

T.D. ATF-398

**27 CFR Parts 4, 19, 24, 194, 250 and
251**

ACTION:

Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements some of the provisions of the Taxpayer Relief Act of 1997. The new law made changes in the excise tax on hard cider, clarified the authority to use semi-generic designations on wine labels, and repealed the requirement for wholesale dealers in liquors to post signs. The wine regulations are amended to incorporate the new hard cider tax rate and to recognize the labeling changes relative to the description of hard cider. These regulations are also amended to incorporate the semi-generic wine designations, and the liquor dealers' regulations are amended to eliminate the requirement for posting a sign. Clarifying changes are made to parts 19, 250 and 251. In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on this temporary rule for a 60 day period following the publication of this temporary rule.

DATES: *Effective dates:* Amendments to 27 CFR

4.24 and 4.257(c) (temporary regulations related to semi-generic wine designations) and the removal of 27 CFR 194.239 through 194.241 (temporary regulations related to wholesale liquor dealers' signs)

are effective retroactive to August 5, 1997. Amendments to 27 CFR 4.21, 19.11, 24.10, 24.76, 24.257(a), 24.278, 250.11 and 251.11 (temporary regulations related to cider) are effective October 20, 1998.

Compliance date: Compliance with the amendments to 27 CFR 4.21 and 24.257(a) is not mandatory until February 17, 1999.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; (202) 927-8230; or mdruhf@atf.gov.

SUPPLEMENTARY INFORMATION:

Background

This temporary rule implements some of the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34 (the Act). These provisions amended the Internal Revenue Code of 1986 (IRC) to create a new excise tax category for hard cider, clarify the authority to use semi-generic designations on wine labels, and repeal the requirement for wholesale dealers in liquors to post signs.

Current Regulation of Fermented Cider

The Bureau of Alcohol, Tobacco and Firearms (ATF) regulates production of all alcohol beverages under the IRC and the Federal Alcohol Administration Act (FAA Act). The IRC covers taxes and qualification requirements for producers, and the FAA Act regulates labeling, advertising, permits and trade practices. Before the enactment of the Act, fermented (hard) cider was subject to some of the requirements of these laws, and exempt from others, depending on how it was made.

Tax Exempt Cider

In the IRC (26 U.S.C. 5042), Congress exempted fermented cider from Federal excise tax and the strict qualification requirements imposed on producers of all other alcohol beverages, if it met the following description:

* * * the non-effervescent product of the normal alcoholic fermentation of apple juice only, which is produced at a place other than a bonded wine cellar and without the use of preservative methods or materials, and which is sold or offered for sale as cider and not as wine or as a substitute for wine. * * *

The restriction on ingredients and prohibition of preservative methods or materials effectively limit the sale of this product to farmstands or other small-scale local enterprises. The Act made no change in 26 U.S.C. 5042. Therefore, no change has been made to 27 CFR 24.76, relating to cider under 26 U.S.C. 5042, except to change the title of that section to "Tax exempt cider," to differentiate this cider from hard cider subject to the new tax rate.

Taxable Cider

Under the former law, taxable fermented cider was made at bonded wine premises and technically could be tax paid as either still wine at \$1.07 per gallon (\$.17 for small producers), artificially carbonated wine at \$3.30 per gallon (\$2.40 for small producers), or sparkling wine at \$3.40 per gallon (no special rate for small producers). Still wine is wine which contains not more than 0.392 gram of carbon dioxide per hundred milliliters and the information available to ATF indicates that all domestic cider was produced as still wine, with few exceptions. If any wine contains 7 percent or more of alcohol by volume, it is subject to the full FAA Act wine labeling

and basic permit requirements. Wine which is under 7 percent alcohol is only subject to the FAA Act requirement that a person who bottles any beverage which contains 0.5 percent or more alcohol by volume must place the Government Warning Statement on the bottle. Minimal ATF marking requirements under the IRC wine regulations, § 24.257(a), apply to wine under 7 percent alcohol and require the identification of the bottler and the brand, kind, alcohol content, and quantity of wine. Otherwise, labeling of wine (including fermented cider) under 7 percent alcohol by volume is within the jurisdiction of the Food and Drug Administration.

Public Law 105-34

The Taxpayer Relief Act of 1997, Pub. L. 105-34, was enacted on August 5, 1997. Section 908 of the Act added a new tax class for wine, called "hard cider," to 26 U.S.C. 5041 and imposed a new rate of tax on hard cider as follows:

On hard cider derived primarily from apples or apple concentrate and water, containing no other fruit product, and containing at least one-half of 1 percent and less than 7 percent alcohol by volume, 22.6 cents per wine gallon.

This new tax rate applies to hard cider removed from bond on or after October 1, 1997.

Small domestic producers of wine are entitled to a credit of up to 90 cents per wine gallon on wine that is within the first 100,000 gallons of wine (other than champagne and other sparkling wines) removed for consumption or sale during a calendar year. This credit may be taken by a bonded wine premises proprietor who does not produce more than 250,000 gallons of wine in a given calendar year. Since the full small producer's wine tax credit allowed by 26 U.S.C. 5041(c) reduces the rate of tax on still wine under 14 percent alcohol (a category which included domestic ciders) to 17 cents instead of 22.6 cents, the new hard cider tax rate would have resulted in an increase in the net tax paid by small domestic wineries who make fermented cider. Therefore, section 908 of the Act provides for a reduced amount of the small producer's wine tax credit to apply to the hard cider tax rate for eligible small producers. This reduced rate of credit, 5.6 cents instead of 90 cents, has the effect of reducing the net tax paid on hard cider by a small domestic producer to 17 cents, the equivalent of the lowest tax available to domestic producers of still wine under 14 percent alcohol by volume. As with the 90 cent credit, the full credit of 5.6 cents per gallon is reduced by 1 percent (\$.00056 per gallon) for each thousand gallons of wine over 150,000 gallons which are produced in a year, until the full tax rate is reached at the 250,000 gallon annual production level. In view of the above, conforming changes are made to 27 CFR 24.278, which implements the tax credit for small domestic producers.

Definition of Hard Cider

The statutory language describes "hard cider" eligible for the new tax rate as "derived primarily from apples or apple concentrate and water, containing no other fruit product, and containing at least one-half of 1 percent and less than 7 percent alcohol by volume."

In this temporary rule, ATF defines hard cider as wine derived primarily from apples or apple concentrate and water (apple juice, or the equivalent amount of concentrate reconstituted to the original brix of the juice prior to concentration, must represent more than 50 percent of the volume of the finished product); containing no other fruit product nor any artificial product

which imparts a fruit flavor other than apple; containing at least one-half of 1 percent and less than 7 percent alcohol by

volume; having the taste, aroma, and characteristics generally attributed to hard cider, and sold or offered for sale as hard cider and not as a substitute for any other alcohol product.

First, this definition specifies that hard cider is a still wine, as required by a recent amendment to the IRC by section 6009 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206.

Second, the Act specifically defines hard cider as “containing no other fruit product.” We recognize that pear juice has been used as a natural source of additional tannin, and that other wine treating materials, such as citric acid, are derived from fruit. We also recognize that the U.S. cider industry has been experimenting with apple ciders flavored with other fruits. However, the statutory language expressly precludes the addition of any other fruit product. We interpret this prohibition to include natural and artificial flavors which give any fruit character other than apple to the product. Any such flavored ciders will be subject to the appropriate tax rate under 26 U.S.C. 5041(b) (1) through (5).

Third, we recognize that one traditional method of making hard cider involves diluting a higher-alcohol apple wine with juice, concentrate and water, or some other liquid. Wines made in this way are formula wines, in either the special natural wine or other than standard wine category. Formula wines may be classified as hard cider, provided they also meet the statutory definition of hard cider. In the temporary rule, we are interpreting the statutory phrase “derived primarily from apples or apple concentrate and water” to mean that apple juice, or the equivalent amount of concentrate reconstituted to the original brix of the juice prior to concentration, must represent more than 50 percent of the volume of the finished product.

Finally, we include in the definition the requirement that hard cider must have the taste, aroma and characteristics generally attributed to hard cider, and that it must be sold or offered for sale as hard cider. These requirements are added to insure that the tax class of hard cider is properly identified, so that it will not be confused with other types of beverages which are subject to different tax classifications.

Labeling of Hard Cider

Since the term “hard cider” now has tax significance, no wine may be designated as “hard cider” unless it

conforms to the definition of cider in § 24.10 and is eligible for the tax category of hard cider. The reference to cider in the FAA labeling regulations at § 4.21(e)(5) is amended to show that the term "hard cider" is reserved for use in wine eligible for the tax category of hard cider. A new § 24.257(a)(3)(iv) has been added to the IRC wine labeling requirements for wine under 7 percent alcohol by volume to show that wine eligible for the tax category of hard cider will be marked "hard cider" rather than simply "wine" under that section.

Forms Affected By New Tax Class for Hard Cider

The Report of Operations, ATF F 5120.17, has been revised to show a new column reflecting the new tax category of hard cider. If a Formula and Process for Wine, ATF F 5120.29, is submitted for a hard cider, the applicant should specify "hard cider" in addition to the designation "special natural wine" or "other than standard wine." The Excise Tax Return, ATF F 5000.24, requires only a total amount of wine tax, without any breakdown by tax class, so that form will not be affected by this change.

Conforming Changes on Hard Cider

We are amending the definition of "eligible wine" which appears in parts 19, 250 and 251 to clarify that wine in the new tax category of hard cider is not eligible for wine and flavor credit if used in a distilled spirits product. Section 5010 of the Internal Revenue Code, which gives the rules for wine and flavor credit, specifically limits the credit to "wine on which tax would be imposed by paragraph (1), (2), or (3) of section 5041(b) but for its removal to bonded premises" of a distilled spirits plant. These three categories are the still wines containing not more than 14 percent, more than 14 to not more than 21 percent, and more than 21 percent alcohol by volume, respectively. In the past, this meant the two remaining categories, both effervescent wines, were ineligible for credit, and the definitions of "eligible wine" in 27 CFR 19.11, 250.11 and 251.11 state simply that still wine is eligible for wine and flavor credit. Since 26 U.S.C. 5041(b)(6) was added to create a tax category of wine called hard cider, and 26 U.S.C. 5010 was not amended to include 5041(b)(6) in the list of wines eligible for wine credit when used in distilled spirits, the existing regulatory definition of eligible wine as still wine is no longer appropriate. We are amending the definition of eligible wine to reflect more closely the wording of the statute.

Transition to New Rules

Hard cider makers already qualified as wineries will not need to change any aspect of their qualification. Removals of eligible hard cider made after October 1, 1997, may be tax paid at the new rate. Some hard cider producers may find that the new tax rate reduces their tax liability to the point where they could reduce their bond coverage if they choose to file a superseding bond. While no change was made to the record keeping regulations in subpart O of part 24, such records, when kept by tax class, should include records of hard cider after October 1, 1997. Small domestic producers will continue to count production of hard cider as part of their total production for purposes of establishing the level of eligibility for wine tax credit.

While the labeling changes requiring the use of the term "hard cider" on wine eligible for the hard cider tax rate, and prohibiting the use of the term "hard cider" on any wine not eligible for such rate, are effective October 20, 1998, we recognize that it is not practical to enforce the new requirements immediately. Therefore, while the labeling regulations are effective on October 20, 1998, we will allow a six-month period to change labels as necessary. The new requirements will become mandatory on February 17, 1999.

Request for Comments on Cider Regulations

ATF encourages comments, supported by historical or technical data, on the definition of hard cider established in this temporary rule. The Technology of Winemaking, Fourth Edition, Amerine et al., AVI Publishing Company, Inc., describes numerous traditional ways of making fermented cider, some of which may not fit the definition of hard cider provided in this temporary rule. We invite comments, including citations of standard references on cider making, on whether adjustments to the definition of hard cider are warranted. For example, is the requirement that more than 50 percent of the volume of the finished product be apple juice or reconstituted apple concentrate adequate to ensure the product has the characteristics of hard cider?

Given the prohibition on fruit flavors other than apple, should wine treating and sweetening materials derived from other fruit products (such as citric acid or high fructose liquid sugars) be prohibited in cider?

The proposals discussed in this background material may be modified due to comments and suggestions received.

Other Changes Made by the Taxpayer Relief Act of 1997

Section 910 of the Act amended 26 U.S.C. 5388 by adding a new subsection (c), Use of semi-generic designations, which generally parallels the language of 27 CFR 4.24 on the same subject, but places the existing list of semi-generic designations outside the discretion of the Secretary.

Since the IRC regulations concerning wine labeling appear in 27 CFR 24.257, already modified as discussed above, that regulation has been further modified to incorporate the wording of 26 U.S.C. 5388, concerning the use of semi-generic wine designations. Additionally, the standard of identity for wines under 27 U.S.C. 205 are incorporated by reference in this section. Finally, a cross-reference has been placed in § 4.24.

We note that the placement of the rules for use of semi-generic designations in the IRC makes them applicable to wines which contain less than 7 percent alcohol by volume and to wines sold only in intrastate commerce. In this temporary rule, the rules governing the use of semi-generic designations are in both part 4 and part 24, but we request comments on whether there is a need to retain them in part 4 or, alternatively, whether any additional changes are needed to § 4.24 as a result of the amendment to the IRC.

Section 1415 of the Act repealed the requirement for wholesale dealers in liquor to post signs identifying their premises and made conforming changes to sections of the law which referenced that requirement. In this document, ATF is amending the Liquor Dealers' regulations by removing Secs. 194.239 through 194.241, which relate to this requirement.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Moreover, any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, record keeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no new collection of information is contained in these regulations. Some of the regulatory sections amended by this temporary rule contain collections of information which were previously approved by the Office of Management and Budget (OMB). Although these sections are being amended, the changes are not substantive or material.

Administrative Procedure Act

Because this document merely implements sections of the law which are effective on August 5, 1997 and October 1, 1997, 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).

Drafting Information

The principal author of this document is Marjorie Ruhf, of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Chemicals, Claims, Customs duties and inspections, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and record keeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and record keeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Tax-paid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting requirements, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Customs duties and inspections, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and record keeping requirements, Spices and flavorings, Surety bonds, Transportation, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspections, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting and record keeping requirements, Transportation, Wine.

Authority and Issuance

Accordingly, chapter I of title 27, Code of Federal Regulations is amended as follows:

PART 4--LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. Section 4.21 is amended by revising the third sentence of paragraph (e)(5) to read as follows:

§ 4.21 The standards of identity.

* * * * *

(e) *Class 5; fruit wine.* * * *

(5) * * * Fruit wines which are derived wholly (except for sugar, water, or added alcohol) from apples or pears may be designated "cider" and "perry," respectively, and shall be so designated if lacking in vinous taste, aroma, and characteristics; however, the term "hard cider" may not be used to designate any fruit wine; it may only be used to designate hard cider as defined in part 24 of this chapter. * * *

* * * * *

Par. 3. Section 4.24 is amended by adding a new sentence to the end of paragraph (b)(1) to read as follows:

§ 4.24 Generic, semi-generic, and non-generic designations of geographic significance.

* * * * *

(b)(1) * * * See § 24.257(c) of this chapter for exceptions to the Director's authority to remove names from paragraph (b)(2) of this section.

* * * * *

PART 19--DISTILLED SPIRITS PLANTS

Par. 4. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111-5113, 5142, 5143, 5146, 5171-5173, 5175, 5176, 5178-5181, 5201-5204, 5206, 5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271, 5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806,

7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 5. Section 19.11 is amended by revising the definition of Eligible wine to read as follows:

§ 19.11 Meaning of terms.

* * * * *

Eligible wine. Wine on which tax would be imposed by paragraph (1), (2), or (3) of 26 U.S.C. 5041(b) but for its removal to distilled spirits plant premises and which has not been subject

to distillation at a distilled spirits plant after receipt in bond.

* * * * *

PART 24 WINE

Par. 6. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111-5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364-5373, 5381-5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342,

7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 7. Section 24.10 is amended by adding definitions for *Cider*, *Hard cider*, and *Tax exempt cider*, to read as follows:

§ 24.10 Meaning of terms.

* * * * *

Cider. See definitions for hard cider and tax exempt cider. For a description of an additional product which may be called cider, see § 4.21(e)(5) of this chapter.

* * * * *

Hard cider. Still wine derived primarily from apples or apple concentrate and water (apple juice, or the equivalent amount of concentrate reconstituted to the original brix of the juice prior to concentration, must represent more than 50 percent of the volume of the finished product) containing no other fruit product nor any artificial product which imparts a fruit flavor other than apple; containing at least one-half of 1 percent and less than 7 percent alcohol by volume; having the taste, aroma, and characteristics generally attributed to hard cider; and sold or offered for sale as hard cider.

* * * * *

Tax exempt cider. Cider produced in accordance with § 24.76

* * * * *

Par. 8. The heading of § 24.76 is revised to read as follows:

§ 24.76 Tax exempt cider.

* * * * *

Par. 9. Section 24.257 is amended by revising paragraph (a)(3)(iii), adding a new paragraph (a)(3)(iv), and adding a new paragraph (c) to read as follows:

§ 24.257 Labeling wine containers.

(a) * * *

(3) * * *

(iii) For any wine with less than 7 percent alcohol by volume (except hard cider as defined in § 24.10), the word "wine" or the words "carbonated wine" if the wine contains more than 0.392 grams of carbon dioxide per 100 milliliters, will appear as part of the brand name or in a phrase in direct conjunction with the brand name;

(iv) For hard cider as defined in § 24.10, the words "hard cider";

* * * * *

(c) Use of semi-generic designations.--(1) In general.
Semi-generic designations may be used to designate wines of an origin other than that indicated by such name only if--

(i) There appears in direct conjunction therewith an appropriate appellation of origin, as defined in part 4 of this chapter, disclosing the true place of origin of the wine, and

(ii) The wine so designated conforms to the standard of identity, if any, for such wine contained in part 4 of this chapter or, if there is no such standard, to the trade understanding of such class or type.

(2) Determination of whether a name is semi-generic.--(i) In general. Except as provided in paragraph (c)(2)(ii) of this section, a name of geographic significance, which is also the designation of a class or type of wine, shall be deemed to have become semi-generic only if so found by the Director.

(ii) *Certain names treated as semi-generic.* The following names shall be treated as semi-generic: Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine or Hock, Sauterne, Haut Sauterne, Sherry, Tokay. (See: 26 U.S.C. 5368, 5388, 5662)

(Approved by the Office of Management and Budget under control number 1512-0503)

Par. 10. Section 24.278 is amended by revising paragraph (d) to read as follows:

§ 24.278 Tax credit for certain small domestic producers.

* * * * *

(d) *Computation of credit.* The credit which may be taken on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed for consumption or sale by an eligible person during a calendar year shall be computed as follows:

(1) For persons who produce 150,000 gallons or less of wine during the calendar year, the credit is \$0.90 per gallon for wine (\$0.056 for hard cider) eligible for such credit at the time it is removed for consumption or sale;

(2) For persons who produce more than 150,000 gallons but not more than 250,000 gallons during the calendar year, the credit shall be reduced by 1 percent for every 1,000 gallons produced in excess of 150,000 gallons. For example, the credit which would be taken by a person who produced 160,500 gallons of wine and hard cider during a calendar year would be reduced by 10 percent, for a net credit against the tax of \$0.81 per gallon for wine or \$0.0504 for hard cider, as long as the wine or hard cider was among the first 100,000 gallons removed for consumption or sale during the calendar year.

* * * * *

PART 194--LIQUOR DEALERS

Par. 11. The authority citation for 27 CFR part 194 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111-5114, 5116, 5117, 5121-5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

Undesignated Center heading and §§194.239 through 194.241 [Removed and reserved]

Par. 12. The undesignated center heading preceding § 194.239 is removed, and §§194.239, 194.240 and 194.241 are removed and reserved.

PART 250--LIQUOR AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 13. The authority citation for part 250 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131-5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 14. Section 250.11 is amended by revising the definition of eligible wine to read as follows:

§ 250.11 Meaning of terms.

* * * * *

Eligible wine. Wine on which tax would be imposed by paragraph (1), (2), or (3) of 26 U.S.C. 5041(b) but for its removal to distilled spirits plant premises and which has not been subject to distillation at a distilled spirits plant after receipt in bond.

* * * * *

PART 251--IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Par. 15. The authority citation for part 251 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

Par. 16. Section 251.11 is amended by revising the definition of

eligible wine to read as follows:

§ 251.11 Meaning of terms.

* * * * *

Eligible wine. Wine on which tax would be imposed by paragraph (1), (2), or (3) of 26 U.S.C. 5041(b) but for its removal to distilled spirits plant premises and which has not been subject to distillation at a distilled spirits plant after receipt in bond.

* * * * *

Signed: July 23, 1998.

John W. Magaw,

Director.

Approved: July 23, 1998.

John P. Simpson

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

[FR Doc. 98-22503 Filed 8-20-98; 8:45 am]

TITLE 27 ²⁷ ALCOHOL, TOBACCO PRODUCTS AND FIREARMS ²⁷
CHAPTER 1 ²⁷ BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT
OF THE TREASURY

Diablo Grande Viticultural Area

TD ATF-399

27 CFR Part 9

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision establishes a viticultural area located in the western foothills of Stanislaus County, California, to be known as ²⁷Diablo Grande²⁷ under 27 CFR part 9.

The viticultural area occupies over 45 square miles, or approximately 30,000 acres. This viticultural area is the result of a petition submitted by Dr. Vincent E. Petrucci, Sc.D., on behalf of the Diablo Grande Limited Partnership, the principal property owner within the viticultural area and developers of the Diablo Grande Resort Community.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT:

David W. Brokaw

Regulations Division

Bureau of Alcohol, Tobacco and Firearms

650 Massachusetts Avenue, NW

Washington, DC 20226

(202) 927-8199.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- (a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- (b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

Dr. Vincent E. Petrucci, Sc.D., petitioned ATF on behalf of the Diablo Grande Limited Partnership, for the establishment of a new viticultural area located in the western foothills of Stanislaus County, California, to be known as "Diablo Grande."

The Diablo Grande Limited Partnership is the principal property owner within the proposed viticultural area and the developer of the Diablo Grande Resort Community. The viticultural area occupies over 45 square miles, or approximately 30,000 acres. Currently there are 35 acres of grapes planted with an additional 17 acres planned for 1997. The petitioner claims that the area can accommodate an additional 2700 acres of future grape plantings.

Comments

A Notice of Proposed Rulemaking, Notice No. 853 (62 FR 34027) was published in the **Federal Register** on June 24, 1997, requesting comments from all interested persons concerning the proposed "Diablo Grande" viticultural area. No comments were received in response to this notice.

Evidence That the Name of the Area Is Locally or Nationally Known

"Diablo Grande," is the name of the destination resort and residential community that occupies the viticultural area. The petitioner stated that this name was given to the area because of its proximity to Mount Diablo, the highest peak of the Pacific Coast mountain range. Mount Diablo is located 38-40 miles due north of the proposed area. The petitioner emphasized the fact that the proposed area lies in the Diablo Mountain Range, which extends from Mount Diablo State Park in Contra Costa County to the south of and beyond the proposed "Diablo Grande" viticultural area located in Stanislaus County. There is evidence that the name, "Diablo Grande," has become associated with the area by both the residents of California, and perhaps

the nation, as a result of the development of the destination resort and residential community. The resort community has been in existence since the early 1990s. As evidence that the area is known as "Diablo Grande," the petitioner submitted copies of 21 newspaper articles that discuss the development of the resort. With the exception of the Golf Course Report, Alexandria, Virginia, all of the articles are from local California newspapers. There is also evidence that the area occupied by the resort was historically known as the "Oak Flats Valley." A working ranch, known as the Oak Flats Valley Ranch once occupied this land. Many of the newspaper articles

submitted by the petitioner refer to the area as the "Oak Flats Valley Ranch" or the "Oak Flats Valley."

No evidence was provided that the area was tied to Mount Diablo prior to the development of the resort. Accordingly, ATF solicited comments in Notice No. 853 on whether the use of the name "Diablo Grande" was proper for this area. No comments were received on this issue.

Consequently, based on the evidence submitted by the petitioner, ATF believes the name "Diablo Grande" is now associated with the area.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

As evidence that the boundaries of the viticultural area are as specified in the petition, the petitioner submitted a map titled, "Stanislaus County Vicinity Map" drawn by Thompson-Hysell Engineers. A more detailed map entitled "Concept Plan Diablo Grande," prepared by T.R.G. Land Resources, Inc., was also submitted. In addition, the

petitioner submitted a newspaper article from The Modesto Bee dated June 28, 1993, showing the boundary area (map) in respect to Interstate Highway 5, the city of Patterson, the City of Newman, and the Santa Clara County line. The border for "Diablo Grande" is illustrated on the "Stanislaus County Vicinity Map" and the maps in the newspaper article giving the location within Stanislaus County, California. The Modesto Bee article describes the site as being located about five miles west of Interstate 5 and seven miles southwest of Patterson consisting of gently sloping hills to steep ridges in the Diablo Range, an eastern arm of the Coast Ranges. The article further describes the site as encompassing portions of three major watersheds--Orestimba, Crow, and Salado Creeks.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Area From Surrounding Areas

Climate

The petitioner provided a table of heat summation in degree days illustrating the contrast in temperature between the viticultural area and areas immediately outside the viticultural area. The data was taken from four separate weather stations located in Newman (10 miles east), Westley (10 miles north), Tracy (25 miles north) and Modesto (30 miles northeast). The petitioner chose these areas because they were the closest areas with climate records. According to the table, the "Diablo Grande" viticultural area is 384 degree days warmer than Modesto, 191 degree days cooler than Newman, 243 degree days cooler than Tracy, and 1022 degree days cooler than Westley.

The petitioner submitted a four year record of rainfall spanning from 1992 to 1995 for the viticultural area. The petitioner also provided a table illustrating the contrast in monthly and annual rainfall in inches between the "Diablo Grande" viticultural area and areas immediately outside of the viticultural area. The rainfall data shows that the "Diablo Grande" viticultural area has an annual rainfall 13.8% to 22.6% higher than the other four areas (Newman, Westley,

Modesto, and Tracy). The higher rainfall in the viticultural area is due to its higher elevation (800 to 2600 feet) as compared to the other four areas which range in elevation from 40 to 300 feet. Rainfall generally occurs during the winter in all five areas, with little or no rainfall during the summer months.

Due to its elevation and the protective mountains, the viticultural area lies above the fog belt in contrast with areas immediately outside of the viticultural area. In the Newman, Patterson, and Westley areas, fog is a common occurrence throughout the rainy season in all but the foothill regions.

The predominant wind directions are from northeast to northwest in the "Diablo Grande" viticultural area due to the orientation of the many mini-valleys encompassing the area and the wind deflection caused by the hills surrounding these mini-valleys. This is a unique feature of the viticultural area's micro-climate as contrasted with the Newman/Westley areas where the reverse is true with the predominant winds coming from the northwest, typical of the flat lands outside of the viticultural area's perimeter.

Soils

The soil characteristics of the "Diablo Grande" viticultural area are not only different and distinct from those of the lower foothills and Central Valley to the east and north, but they are also different from other areas of the Diablo Range to the south and west of the viticultural area.

The petitioner provided a general description of the soils in the form of a report entitled, "Diablo Grande Specific Plan Draft Environmental Impact Report" prepared by LSA Associates, Inc., Pt. Richmond, California for the Stanislaus County Department of Planning and Community Development. The petitioner also submitted a report from the Soil Conservation Service which recently mapped soils within the viticultural area and identified 16 major soil types. Extensive soil sampling and detailed analysis (both physical and chemical) have been conducted at two different locations within the viticultural area. In December of 1989, thirteen samples were taken at various sites in the vicinity of the Oak Flat Ranch. In May of 1996, fourteen samples from Isom Ranch were collected and analyzed. A copy of this analysis was included with the petition.

These reports show that a majority of the soils found in the "Diablo Grande" viticultural area are composed of the following series listed in approximate order of occurrence: Arburua loam, Wisflat sandy loam, Contra Costa clay loam, and San Timoteo sandy loam, with lesser amounts of Zacharias clay loam and gravelly clay loam. Most of the soils are complexes made up of two or more of these series as well as occasional rock outcrops of exposed sandstone and shale. In these complexes, the soil series are so intimately intermixed that it is not practical to separate them geographically.

The reports show that the soils within the viticultural area typically have slopes ranging from 30% to 75% and elevations from 400 to 2700 feet. An exception is the relatively minor Zacharias series which has slopes of 2% to 5% and elevations of 200 to 400 feet. The soils in the viticultural area are derived from sandstone and vary from shallow to very deep with most of the complexes showing moderate depth.

The soils are well-drained to somewhat excessively-drained. Permeability varies from slow to moderately rapid, surface run-off rates are rapid and, according to the petitioner, the potential for water erosion can be severe. The petitioner provided a table giving a complete description of the characteristics for each soil type.

In contrast to the soils of the viticultural area, the soils of the surrounding areas are largely composed of different soil series with different characteristics, including elevations and slopes. The petitioner provided an exhibit defining the various soil series and soil types, and an exhibit with aerial photographic maps showing soil type location by map numbers.

While most of the soil series which are found within the "Diablo Grande" viticultural area can also be found in the nearby surrounding areas, these series represent very small portions of the total in those surrounding areas. Additionally, many of the soil series which make up the major soil types of the surrounding areas are not found at all within the viticultural area. These soil types include Capay clay, Vernalis clay loam, Stomar clay loam, Chaqua clay loam, Calla clay loam, Carbona clay, Alo clay, Vaquero clay, El Salado loam and fine sandy loam. These series are found to the east and north of the viticultural area. Most of these series have slopes of 0% to 2% and elevations of 25 to 400 feet with four of these series having slopes up to 8%, 15%, 30%, and 50% respectively and elevations from 300 to 1600 feet.

There is another major difference between the "Diablo Grande" viticultural area soils and most of those to the east and north. The "Diablo Grande" soils are residual soils formed from sedimentary deposits of sandstone and calcareous sandstone while most of the surrounding soils are from alluvial deposits of mixed rock parent material having lower slopes and elevations. The area surrounding the "Diablo Grande" viticultural area to the west and south includes the Orestimba Creek Canyon beyond which lies a more rugged portion of the Diablo Range. Much of the land directly west of the viticultural area is part of the Henry W. Coe State Park and although this area includes some of the same soil series as the "Diablo Grande" viticultural area, there are also many new series including Gonzaga clay, Honker clay, Franciscan clay loam, Vellecitos clay, Gaviota gravelly loam, Henneke clay, Hentine loam, and Hytop clay. These soils generally have slopes of 30% to 75% and elevations of 700 to 3300 feet.

Topography

The geography of the viticultural area sets it apart from the surrounding areas in several respects. Three main water courses traverse the area: Salado Creek, Crow Creek, and Orestimba Creek. Salado and Crow Creek traverse the area from the vicinity of Mikes Peak along the western boundary of the viticultural area, northeast

and east respectively, toward Interstate 5. Orestimba Creek traverses the southwestern and southern boundary line as it flows eastward. Current vineyard plantings are at elevations ranging from 1000 feet mean sea level (msl) near the vineyard located in the vicinity of the Oak Flat Ranch to 1800 feet msl at the Isom Ranch. These vineyard site elevations are the highest elevations where grapes are grown in Stanislaus County. This contrasts with other Stanislaus County vineyards outside the "Diablo Grande" viticultural area where grapes are grown at elevations ranging from 70 to 90 feet at Modesto to 300 to 340 feet at the base of the foothills near Patterson where a newly planted vineyard (1996) of 90 acres exists approximately 4.2 miles east of the viticultural area boundary. The petitioner distinguishes this vineyard site from the "Diablo Grande"

viticultural area by noting that the Patterson site is 340 feet lower and has a soil type which is all Vernalis-Zacharias complex with 0% to 2% slopes. These conditions do not exist in the "Diablo Grande" viticultural area.

The topographic features of the viticultural area include many "mini-valleys" as a result of its mountainous structure. This provides several attributes not found in the vineyards planted on the flat lands in the interior of Stanislaus County. Grapes grown on the terraced hillsides of the viticultural area are subject to a mesoclimate (or topoclimate or site climate) which can vary from the general macroclimate due to differences mainly in elevation and slope. Thus, site selection becomes an important feature when working with this type of topography as contrasted to the flat lands of 1% to 2% slopes. There is the opportunity to grow grapes on slopes (15%-30%) that have western, eastern, southern, or northern exposure or any combination of all four slope exposures.

The petitioner provided a diagram purporting to show how mesoclimates are influenced by sloping contour topography. The southern and western slopes receive a greater exposure to sunshine and, therefore, accumulate more heat units than the northern or eastern slopes. It is this difference in sunshine and heat that makes the viticultural area's mesoclimate. According to the petitioner, grapes grown on all four slope exposures, when harvested together and crushed as one lot, make wines that differ considerably from grapes grown on the lower elevation flat lands. The petitioner claims that this is the key factor which makes the viticultural area wines distinct from those of the surrounding area. In support of this claim the petitioner provided several letters from staff members at the Viticulture and Enology Research Center, California State

University, Fresno and winemakers. These letters indicate that wines made from grapes grown in the "Diablo Grande" viticultural area exhibit characteristics distinctive enough to deserve consideration for a specific appellation. ATF has concluded that there is sufficient evidence to establish the "Diablo Grande," area as a distinct viticultural area under 27 CFR part 9.

Geographic Brand Names

A brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named. See 27 CFR 4.39(i). Consequently, establishment of this viticultural area would preclude the use of the term "Diablo Grande" as a brand name for a wine, unless the wine can claim "Diablo Grande" as an appellation of origin, or complies with one of the exceptions in the regulation.

Boundaries

The boundary of the "Diablo Grande" viticultural area may be found on four United States Geological Survey Quadrangle 7.5 minute series (Topographic) maps, entitled Patterson Quadrangle, California--Stanislaus Co., Copper Mtn. Quadrangle, California--Stanislaus Co., Wilcox Ridge, California--Stanislaus Co., and Orestimba Peak, California--Stanislaus Co.

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 requirement to collect information is imposed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own

efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. 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 in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is David W. Brokaw, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9--AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C--Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.156 to read as follows:

§ 9.156 Diablo Grande.

(a) *Name.* The name of the viticultural area described in this section is "Diablo Grande".

(b) *Approved maps.* The appropriate maps for determining the boundary of the Diablo Grande viticultural area are the following four U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps. They are titled:

(1) Patterson Quadrangle, California--Stanislaus Co., 1953
(Photorevised 1971, Photoinspected 1978);

(2) Copper Mtn. Quadrangle, California--Stanislaus Co., 1953
(Field Check 1956, Aerial Photo 1971);

(3) Wilcox Ridge, California--Stanislaus Co., 1956 (Photorevised
1971);

(4) Orestimba Peak, California--Stanislaus Co., 1955 (Photorevised
1971).

(c) *Boundary.* The Diablo Grande viticultural area is
located in the western foothills of Stanislaus County, California.
The beginning point is at Reservoir Spillway 780 in section 8,
Township 6 South, Range 7 East (T. 6S., R. 7E.) on the Patterson
Quadrangle U.S.G.S. map.

(1) Then proceed northwest to Salt Grass Springs to the point
where the 1000 foot contour line crosses the northern section
line of section 9, T. 6S., R. 6E., on the Copper Mtn., Quadrangle
U.S.G.S. map.

(2) Then proceed due south past Copper Mountain in section
16, T. 6S., R. 6E., to Mikes Peak in section 4, T. 7S., R. 6E.,
on the Wilcox Ridge Quadrangle U.S.G.S. map.

(3) Then proceed due west to Orestimba Creek in section 6,
T. 7S., R. 6E.

(4) Then proceed following Orestimba Creek south/southeast
and then east/northeast to the point where Orestimba Creek meets
Bench Mark #340 in section 28, T. 7S., R. 7E., on the Orestimba
Peak Quadrangle U.S.G.S. map.

(5) Then proceed northwest to the point of beginning at Reservoir
Spillway 780 in section 8, T. 6S., R. 7E.

Signed: May 11, 1998.

John W. Magaw,

Director.

Approved: May 29, 1998.

John P. Simpson,

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

[FR Doc. 98-16502 Filed 6-19-98; 8:45 am]

Subpart C- FIREARMS

TITLE 27-ALCOHOL, TOBACCO PRODUCTS AND FIREARMS § CHAPTER
1 § BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF
THE TREASURY

Commerce in Explosives

T.D. ATF-400

27 CFR Part 55

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends regulations to clarify the meanings of terms, increase license and permit fees, eliminate duplication in licensing, relax the licensing requirements for on-site manufacturers, implement a storage notification requirement for manufacturers and other storers of explosives, update the theft/loss hotline number for reporting thefts or losses of explosives, and make minor modifications to regulations on storage.

DATES: This final rule is effective December 22, 1998.

FOR FURTHER INFORMATION CONTACT:

Mark D. Waller

ATF Specialist

Arson and Explosives Programs Division

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Washington, DC 20226

(202) 927-8310.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) is concerned with the safety of emergency personnel responding to fires on sites where explosives are stored. ATF is amending the regulations in 27 CFR Part 55 to require any person who stores explosive materials to notify local fire departments of the locations where explosives

are stored. The regulations are also being amended to clarify the meaning of terms; modify the American Table of Distances to conform with the Institute of Makers of Explosives (IME) latest revisions; update and incorporate references and definitions to reflect current government and industry standards; facilitate transition to the United Nations explosives classification codes; allow on-site manufacturers to operate under one manufacturer's license; and extend the term for original and renewal licenses and permits from one year to three years.

Notice of Proposed Rulemaking

On October 15, 1996, ATF published in the **Federal Register** a notice of proposed rulemaking (Notice No. 841, 61 FR 53688), with a 90-day comment period. The comment period closed on January 13, 1997. This notice proposed the following amendments to the regulations:(1) Require anyone storing explosive materials to notify local law enforcement officials and fire departments of the type, magazine capacity, and location of each site where explosive materials are stored.

(2) Increase the license and permit fees to \$200 and \$100 and renewals to \$100 and \$50, respectively.

(3) Eliminate the manufacturer-limited license.

(4) Amend the definitions of "fireworks," "highway," and "salute," and change the names of "common fireworks" to "consumer fireworks" and "special fireworks" to "display fireworks" and amend their definitions.

(5) Amend the definition of "fireworks non-process building" to eliminate the unnecessary reference to fireworks plant warehouse.

(6) Substantially adopt the American Table of Distances as revised by the Institute of Makers of Explosives.

(7) Update the ATF hotline for reporting thefts or losses of explosive materials.

ATF received 426 written comments in response to Notice No. 841. Comments were submitted by several major model rocketry industry groups such as the National Association of Rocketry (NAR) and Tripoli Rocketry Association (Tripoli), and their members. Comments were also submitted by fireworks hobbyists, small display fireworks operators, major explosives industry safety associations and professional organizations such as the Institute of Makers of Explosives (IME), the American Pyrotechnic Association (APA), the National Fire

Protection Association (NFPA), and the International Association of Fire Fighters (IAFF). Comments were also received from concerned citizens.

Discussion of Comments--Final Rule

Subpart B--Definitions

ATF received three comments relating to proposals to amend the definitions in 27 CFR 55.11. Notice No. 841 proposed defining the term "highway" as "any public street, public alley, or public road." With regard to the definition of "highway," a number of commenters emphasized the importance of defining highway as any public road, public street, or public alley, and stressed that such roads should not include private roads on mine property, manufacturing sites, or construction projects. The commenters stated that the tables of distances set forth in the regulations are intended to apply only to roads financed, constructed, or maintained by government entities. Other comments also strongly urged ATF to clarify that the definition of "highway" includes a public funding element, so as to avoid posing undue burden on the explosives industry in placing magazines at minimum separation distances from private roads. In the interest of ATF's statutory obligation to consider public safety, if a privately financed, constructed, or maintained road is regularly and openly traveled by the general public, ATF may determine that the road is "public" so that it is subject to the table of distance requirements. This interpretation allows ATF to maintain the flexibility to determine on a case-by-case basis whether a private road is used by the general public in a manner that warrants protection by the table of distance requirements. Accordingly, ATF is revising the definition of "highway" proposed in Notice No. 841 to include this interpretation.

ATF received two comments in response to proposals to amend various fireworks definitions. One commenter recommends that ATF eliminate confusion as to which table of distances, if any, applies to fireworks plant warehouses and fireworks and non-process buildings. The commenter recommends that the definition of fireworks plant warehouse be amended to state that no work of any kind shall be performed in the warehouse except for the placement in or removal of fireworks items from storage.

The commenter also recommends that the definition of "fireworks non-process building" be amended to eliminate "fireworks plant warehouse" from its definition. Such warehouse would,

therefore, not be subject to the separation distances in sections 55.222 and 55.223. The final rule adopts both these comments.

The commenter also urges ATF to consider incorporating NFPA 1124, Code for the Manufacture, Transportation, and Storage of Fireworks into 27 CFR Part 55, by reference. Further, the NFPA, which represents over 65,000 individuals and 115 national organizations including individuals from fire departments, health care facilities, and Federal, State, and local governments, makes the same suggestion. The NFPA recommends that ATF adopt a variety of its codes and standards by reference where applicable, such as NFPA 495, Explosives Materials Code, NFPA 498, Safe Havens and Interchange Lots, NFPA 1123, Code for Fireworks Display, NFPA 1125, Code for the Manufacture of Model and High Power Rocket Motors, NFPA 1126, Standard for the Use of Pyrotechnics before a Proximate Audience, and NFPA 1127, Code for High Power Rocketry. Since the standards set forth in these industry codes were not part of the proposals set forth in Notice No. 841, ATF is not adopting this comment at this time. However, ATF will consider including these standards in a separate notice of proposed rulemaking to be published at a future date.

ATF received one comment on its proposals to amend the definitions of "common" and "special" fireworks by using specific United Nations Organization (UN) identification numbers. The commenter feels that the incorporation of UN numbers in conjunction with references to U.S. Consumer Product Safety Commission (CPSC) and U.S. Department of Transportation (DOT) offers little improvement over the current definitions.

As an alternative, the commenter recommends that ATF consider definitions and classifications based on amounts and what stage the compositions, components, and semi-finished fireworks are in as they move through the manufacturing process. The commenter recommends that ATF provide examples distinguishing size, construction, composition, effect, and labeling for purposes of defining applicability of the regulations. ATF will not be adopting this suggestion at this time as it would not enhance the effective administration of the Federal explosives regulations.

It has also been recommended that ATF adopt the American Pyrotechnic Association's (APA) Standard 87-1 with respect to defining and classifying fireworks for licensing and storage determinations, in addition to the appropriate NFPA standards and codes. ATF will consider incorporating these standards into the regulations in a separate notice of proposed rulemaking.

In the course of examining the U.S. Department of Transportation (DOT) regulations, ATF determined that certain items do not fall within the DOT definition of consumer fireworks in terms of their suitability for use by the general public. Certain items present a minor explosion hazard and are regulated by DOT in the same manner as consumer fireworks. DOT classifies these articles as "articles, pyrotechnic for technical purposes." Although it is clear that these items should be exempt from ATF licensing, storage, and record keeping requirements, they are intended to be used by professional pyrotechnics operators only, and not the general public. In Notice No. 841, ATF proposed that articles pyrotechnic (UN0431 and UN0432) be included in the definition of "consumer fireworks." In the interest of public safety, ATF has determined that a separate definition is needed for articles pyrotechnic, to prevent the general public from considering these items as suitable for other than professional use only. Accordingly, ATF has amended the regulations to clarify that the manufacture of articles pyrotechnic is regulated by ATF. However, finished articles pyrotechnic, though not suitable for general consumer use, are not subject to ATF importation, licensing, storage, or record keeping requirements. This final rule amends regulations in 27 CFR 55.141 to provide this exemption. Information regarding fused setpieces is being added to the definitions of "consumer fireworks" and "special fireworks" to help clarify their classification.

Subpart D--Licenses and Permits

Four hundred and seventeen commenters, representing **98** percent of the total comments received, strongly opposed the licensing fee increase. ATF proposed to raise the Federal explosives users permit fee from \$20 to 100. The majority of this group of commenters were affiliated with one or more of the major model rocketry associations such as NAR or Tripoli, whose members typically hold a Type 34 permit, users of low explosives.

As an alternative to the fee increase, this group proposed that ATF designate a special type of hobby permit for exclusive use by high power model rocket hobbyists which would have a lower fee than that proposed by Notice No. 841. In response to these and other similar comments, ATF will propose in a separate notice of proposed rulemaking to create a separate definition and a lower permit fee for all "hobbyists" who receive, transport or ship low explosive materials in the pursuit of recreational or sporting activities. No other comments were received in opposition to the proposal to raise license and permit fees. Statutory authority

allows ATF to set fees up to \$200 for a license or permit. Accordingly, upon the effective date of this final rule, the fee to engage in the business of importing, manufacturing, or dealing in explosive materials increases from \$50 to \$200; from \$20 to \$100 for a users permit; and from \$2 to \$75 for a user-limited permit.

In addition, in conjunction with the fee increases, this final rule increases the term of the original license or permit from one year to three years.

Two commenters expressed opposition to the proposal to eliminate the category of "manufacturer-limited" license. ATF bases its elimination of this license on the fact that no such licenses have been issued in the last 4 years and that the activities covered under the manufacturers-limited license are generally of an ongoing nature and thus would require a regular manufacturer's license. Accordingly, this final rule eliminates the manufacturer-limited license, as proposed in Notice No. 841.

Subpart K Storage

Notification of the "Authority Having Jurisdiction for Fire Safety" of Explosives Storage Sites.

Overall, commenters favored a notification requirement to the appropriate local authority regarding the location of sites where explosives are stored. However, approximately 200 commenters opposed a sweeping requirement to notify all local law enforcement officials of storage. These commenters suggest that notification be limited to local emergency response personnel only, as the term "local law enforcement official" could be interpreted broadly enough to include individuals who may not necessarily have a need to know of such storage. This final rule clarifies that notification shall be made specifically to the "authority having jurisdiction for fire safety," defined as the fire department having jurisdiction for the area in which explosive materials are to be manufactured or stored. ATF will make available a listing of all State Fire Marshals to assist the industry in determining the Authority Having Jurisdiction for Fire Safety for a particular area. The list will also be posted on the ATF web page at www.atf.treas.gov.

ATF received one comment opposing the revision of section 55.218 by reducing the table of distances for the storage of explosive materials from 2 pounds to 0 pounds on the basis that it would require persons handling less than 2 pounds of fireworks to conform with overly strict separation distances. The commenter proposes that ATF should instead distinguish section 55.218, Table of distances

for the storage of explosive materials, from section 55.219, Table of distances for storage of low explosives, more clearly to show that section 55.218 covers high explosives and section 55.219 covers low explosives only. ATF believes that section 55.206 adequately clarifies which table of distances to use for the storage of explosive materials, including when to use the table found at section 55.224 for the storage of display fireworks. Accordingly, we are not adopting this comment.

ATF is amending the table of distances in §§ 55.222 and 55.223 to make it clear that, while consumer fireworks or articles pyrotechnic in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks or articles are subject to regulation. Thus, fireworks process buildings where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.

Miscellaneous

One commenter addressed a note to section 55.224, the table of distances for the storage of display fireworks. Note 3 of the table of distances in section 55.224 allows the distances in the table to be halved for magazines which were in use prior to March 7, 1990, if properly barricaded. The commenter requests that ATF clarify that distances between grandfathered magazines may also be halved if properly barricaded.

ATF concurs that Note 3 in the table of distances in section 55.224 was also intended to apply to the distances between magazines which were in use prior to March 7, 1990. Accordingly, this final rule amends section 55.224 to apply Note No. 3 to the separation distances between magazines.

A technical amendment is being made to Secs. 55.45(b) and 55.46(b) to specify the application used for user-limited special fireworks permits, ATF Form 5400.21. In addition, a technical amendment to § 55.63 renames the section as "Magazines acquired or constructed after permit or license is issued." This change is necessary to clarify the intent of this section which is to account for explosives storage facilities constructed or otherwise acquired after the license or permit is issued.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These final regulations provide clarification and consistency with industry terminology. In addition, the increases in license and permit fees are within the maximum amounts provided by the statute. Further, the burden placed on licensees and permittees for the collection and disclosure of explosives manufacture and storage information to the local authority having jurisdiction for explosives or fire safety is minimal.

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 Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1512-0536. 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 the Office of Management and Budget. The collection of information in this regulation is in 27 CFR 55.201(f). This information is required to inform fire departments having jurisdiction over sites where explosives are stored or manufactured so that they can protect emergency response personnel called to fire scenes where explosives may be stored. The likely respondents are Federal licensees and permittees who store or manufacture explosive materials. The estimated total annual reporting burden per respondent is 90 minutes. The estimated number of respondents is 10,057. The estimated annual frequency of responses is 2.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, D.C., 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Washington, D.C., 20226.

Disclosure

Copies of the notice of proposed rulemaking, the 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 Mark D. Waller, Arson and Explosives Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and record keeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR Part 55 as follows:

PART 55--COMMERCE IN EXPLOSIVES

Paragraph 1. The authority citation for 27 CFR Part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

Par. 2. Section 55.11 is amended by removing the definitions for the terms "Common fireworks," "Licensed manufacturer-limited," "Manufacturer limited," and "Special fireworks;" by revising the definitions for the terms "Bulk salutes," "Fireworks," "Fireworks non-process building," "Fireworks plant warehouse," "Fireworks shipping building," "Highway," and "Salute;" and by adding new definitions for the terms "Articles pyrotechnic," "Authority having jurisdiction for fire safety," "Consumer fireworks," and "Display fireworks" to read as follows:

§ 55.11 Meaning of terms.

* * * * *

Articles pyrotechnic. Pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use. Such articles meeting the weight limits for consumer fireworks but not labeled as such and classified by U.S. Department of Transportation regulations in 49 CFR 172.101 as UN0431 or UN0432.

* * * * *

Authority having jurisdiction for fire safety. The fire department having jurisdiction over sites where explosives are manufactured or stored.

* * * * *

Bulk salutes. Salute components prior to final assembly into aerial shells, and finished salute shells held separately prior to being packed with other types of display fireworks.

* * * * *

Consumer fireworks. Any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in title 16, Code of Federal Regulations, parts 1500 and 1507. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials. Consumer fireworks are classified as fireworks UN0336, and UN0337 by the U.S. Department of Transportation at 49 CFR 172.101. This term does not include fused setpieces containing components which together exceed 50 mg of salute powder.

* * * * *

Display fireworks. Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as "consumer fireworks." Display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the U.S. Department of Transportation at 49 CFR 172.101. This term also includes fused setpieces containing components which together exceed 50 mg of salute powder.

* * * * *

Fireworks. Any composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of "consumer fireworks" or "display fireworks" as defined by this section.

* * * * *

Fireworks non-process building. Any office building or other building or area in a fireworks plant where no fireworks, pyrotechnic compositions or explosive materials are processed or stored.

* * * * *

Fireworks plant warehouse. Any building or structure used exclusively for the storage of materials which are neither explosive materials nor pyrotechnic compositions used to manufacture or assemble fireworks.

* * * * *

Fireworks shipping building. A building used for the packing of assorted display fireworks into shipping cartons for individual public displays and for the loading of packaged displays for shipment to purchasers.

* * * * *

Highway. Any public street, public alley, or public road, including a privately financed, constructed, or maintained road that is regularly and openly traveled by the general public.

* * * * *

Salute. An aerial shell, classified as a display firework, that contains a charge of flash powder and is designed to produce a flash of light and a loud report as the pyrotechnic effect.

* * * * *

Par. 3. Section 55.30 is amended by removing ☐800-424-9555☐ in paragraphs (a), (b), and the introductory text of paragraph (d) and adding in its place ☐1-800-800-3855☐ and by revising paragraphs (c)(4) and (d)(3) to read as follows:

§ 55.30 Reporting theft or loss of explosive materials.

* * * * *

(c) * * *

(4) Description (dynamite, blasting agents, detonators, etc.) and United Nations (UN) identification number, hazard division number, and classification letter, e.g., 1.1D, as classified by the U.S. Department of Transportation at 49 CFR 172.101 and 173.52.

(d) * * *

(3) Description (United Nations (UN) identification number, hazard division number, and classification letter, e.g., 1.1D) as classified by the U.S. Department of Transportation at 49 CFR 172.101 and 173.52.

Par. 4. Section 55.41(b)(2) is revised to read as follows:

§ 55.41 General.

* * * * *

(b) * * *

(2) A separate license shall not be required of a licensed manufacturer with respect to his on-site manufacturing.

* * * * *

Par. 5. Section 55.42 is revised to read as follows:

§ 55.42 License fees.

(a) Each applicant shall pay a fee for obtaining a three year license, a separate fee being required for each business premises, as follows:

(1) Manufacturer--\$200.

(2) Importer--\$200.

(3) Dealer--\$200.

(b) Each applicant for a renewal of a license shall pay a fee for a three year license as follows:

(1) Manufacturer--\$100.

(2) Importer--\$100.

(3) Dealer--\$100.

Par. 6. Section 55.43 is revised to read as follows:

§ 55.43 Permit fees.

(a) Each applicant shall pay a fee for obtaining a permit as follows:

(1) User--\$100 for a three year permit.

(2) User-limited (nonrenewable)--\$75.

(b) Each applicant for renewal of a user permit shall pay a fee of \$50 for a three year permit.

§ 55.45 [Amended]

Par. 7. Section 55.45(b) is amended by adding "or Permit, User Limited Special Fireworks, ATF F 5400.21" after "ATF F 5400.16" in the first sentence and by adding "and ATF F 5400.21" after "ATF F 5400.16" in the last sentence.

Par. 8. Section 55.46(b) is revised to read as follows:

§ 55.46 Renewal of license or permit.

* * * * *

(b) A user-limited permit is not renewable and is valid for a single purchase transaction. Applications for all user-limited permits must be filed on ATF F 5400.16 or ATF F 5400.21, as required by § 55.45.

Par. 9. Section 55.51 is revised to read as follows:

§ 55.51 Duration of license or permit.

An original license or permit is issued for a period of three years. A renewal license or permit is issued for a period of three years. However, a user-limited permit is valid only for a single purchase transaction.

Par. 10. Section 55.63 is amended by revising the heading of paragraph (d) to read as follows:

§ 55.63 Explosives magazine changes.

* * * * *

(d) Magazines acquired or constructed after permit or license is issued. * * *

Par. 11. Section 55.102 is revised to read as follows:

§ 55.102 Authorized operations by permittees.

(a) *In general.* A permit issued under this part does not authorize the permittee to engage in the business of manufacturing, importing, or dealing in explosive materials. Accordingly, if a permittee's operations bring him within the definition of manufacturer, importer, or dealer under this part, he shall qualify for the appropriate license.

(b) Distributions of surplus stocks. Permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance with § 55.103, and to non-licensees or to non-permittees in accordance with § 55.105(d).

Par. 12. Section 55.103 (a)(1) and (2) is revised to read as follows:

§ 55.103 Transactions among licensees/permittees.

(a) *General.* (1) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to a licensee or another permittee) who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to continue business or operations under this part has been terminated.(2) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to another licensee or permittee) shall verify the license or permit status of the distributee prior to the release of explosive materials ordered, as required by this section.

* * * * *

Par. 13. Section 55.105(d) is revised to read as follows:

§ 55.105 Distributions to non-licenses and non-permittees.

* * * * *

(d) A permittee may dispose of surplus stocks of explosive materials to a non-licensee or non-permittee if the non-licensee or non-permittee is a resident of the same State in which the permittee's business premises or operations are located, or is a resident of a State contiguous to the State in which the permittee's place of business or operations are located, and if the requirements of paragraphs (b), (c), (e) and (f) of this section are fully met.

* * * * *

§ 55.122 [Amended]

Par. 14. Section 55.122 is amended by removing "special fireworks" wherever it appears in paragraphs (b)(4), (b)(5), (c)(4), and (c)(5) and adding in its place "display fireworks", and by removing "(sf)" in paragraphs (b)(5) and (c)(5) and adding in its place "(df)".

§ 55.123 [Amended]

Par. 15. Section 55.123 is amended by removing "special fireworks" wherever it appears in paragraphs (b)(3), (b)(4), (c)(4), (c)(5), and (d)(3), and adding in its place "display fireworks", and by removing "(sf)" in paragraphs (b)(4), (c)(5), and (d)(3) and adding in its place "(df)".

§ 55.124 [Amended]

Par. 16. Section 55.124 is amended by removing "special fireworks" wherever it appears in paragraphs (b)(4), (b)(5), (c)(4), and (c)(5) and adding in its place "display fireworks", and by removing "(sf)" in paragraphs (b)(5) and (c)(5) and adding in its place "(df)".

Par. 17. Section 55.125 is amended by revising the section heading and the introductory text of paragraph (a); by removing "license or" in paragraph (a)(1) and "license or" in the third sentence of paragraph (a); by removing paragraph (b) and redesignating paragraphs (c), (d), (e), and (f) as (b), (c), (d), and (e); and by revising redesignated paragraphs (b)(4) and (b)(5) to read as follows:

§ 55.125 Records maintained by permittees.

(a) Each permittee shall take true and accurate physical inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The permittee shall take a special inventory * * *

(b) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), (etc.) and size (length and diameter or diameter only of display fireworks)).

* * * * *

Par. 18. Section 55.127 is amended by revising the first sentence and by removing "special fireworks" wherever it appears and adding in its place "display fireworks" to read as follows:

§ 55.127 Daily summary of magazine transactions.

In taking the inventory required by §§ 55.122, 55.123, 55.124, and 55.125, a licensee or permittee shall enter the inventory in a record of daily summary transactions to be kept at each magazine of an approved storage facility; however, these records may be kept at one central location on the business premises if separate records of daily transactions are kept for each magazine. * * *

Par. 19. Section 55.141(a)(7) is revised to read as follows:

§ 55.141 Exemptions.

(a) * * *

(7) The importation, distribution, and storage of fireworks classified as UN0336, UN0337, UN0431, or UN0432 explosives by the U.S. Department of Transportation at 49 CFR 172.101 and generally known as "consumer fireworks" or "articles pyrotechnic."

* * * * *

§ 55.163 [Amended]

Par. 20. Section 55.163 is amended by removing "licensed manufacturer-limited,".

Par. 21. Section 55.201 is amended by revising paragraph (d), by adding paragraph (f), and by adding a parenthetical text at the end of the section to read as follows:

§ 55.201 General.

* * * * *

(d) The regulations set forth in §§ 55.221 through 55.224 pertain to the storage of display fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks and articles pyrotechnic.

* * * * *

(f) Any person who stores explosive materials shall notify the authority having jurisdiction for fire safety in the locality

in which the explosive materials are being stored of the type, magazine capacity, and location of each site where such explosive materials are stored. Such notification shall be made orally before the end of the day on which storage of the explosive materials commenced and in writing within 48 hours from the time such storage commenced.(Paragraph (f) approved by the Office of Management and Budget under control number 1512-0536)

Par. 22. Section 55.202(b) is revised to read as follows:

§ 55.202 Classes of explosive materials.

* * * * *

(b) *Low explosives.* Explosive materials which can be caused to deflagrate when confined (for example, black powder, safety fuses, igniters, igniter cords, fuse lighters, and ~~display fireworks~~ classified as UN0333, UN0334, or UN0335 by the U.S. Department of Transportation regulations at 49 CFR 172.101, except for bulk salutes).

* * * * *

§ 55.206 [Amended]

Par. 23. Section 55.206(b) is amended by removing ~~special fireworks~~ and adding in its place ~~display fireworks~~.

Par. 24. Section 55.218 is amended by removing ~~Public highways glass A to D~~ where it appears in the table heading, and adding in its place ~~Public highways with traffic volume 3000 or less vehicles/day~~; by removing the number ~~22~~ where it appears as the first entry in the column titled ~~Pounds over~~ and adding in its place the number ~~0;~~ and by revising the source citation at the end of the table to read as follows:

§ 55.218 Table of distances for storage of explosive materials.

* * * * *

Table: American Table of Distances for Storage of Explosives (December 1910), as Revised and Approved by the Institute of Makers of Explosives-July, 1991.

Par. 25. Section 55.221 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

§ 55.221 Requirements for display fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks or articles pyrotechnic.

(a) Display fireworks, pyrotechnic compositions, and explosive materials used to assemble fireworks and articles pyrotechnic shall be stored at all times as required by this Subpart unless they are in the process of manufacture, assembly, packaging, or are being transported.

* * * * *

(d) All dry explosive powders and mixtures, partially assembled display fireworks, and finished display fireworks shall be removed from fireworks process buildings at the conclusion of a day's operations and placed in approved magazines.

Par. 26. Section 55.222 is amended by removing "special fireworks" wherever it appears and adding in its place "display fireworks"; by removing "common fireworks" wherever it appears and adding in its place "consumer fireworks"; and by revising footnote 3 at the end of the table to read as follows:

§ 55.222 Table of distances between fireworks process buildings and

between fireworks process and fireworks non-process buildings.

* * * * *

\3\ While consumer fireworks or articles pyrotechnic in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks or articles are subject to regulation. Thus, fireworks process buildings where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.

* * * * *

Par. 27. Section 55.223 is amended by revising the title heading of the table; by removing "special fireworks" in the table heading and adding in its place "display fireworks"; by removing "common fireworks" in the table heading and adding in its place "consumer fireworks"; by revising footnote 2 and adding a new footnote 5 at the end of the table to read as follows:

§ 55.223 Table of distances between fireworks process buildings and

other specified areas.

Distance from Passenger Railways, Public Highways, Fireworks Plant Buildings used to Store Consumer Fireworks and Articles Pyrotechnic, Magazines and Fireworks Shipping Buildings, and Inhabited Buildings. \3\ \4\ \5\

* * * * *

\2\ While consumer fireworks or articles pyrotechnic in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks or articles are subject to regulation. Thus, fireworks process buildings where consumer fireworks or articles pyrotechnic are being processed shall meet these requirements.

\3\ This table does not apply to the separation distances between fireworks process buildings (see § 55.222) and between magazines (§§ 55.218 and 55.224).

\4\ The distances in this table apply with or without artificial or natural barricades or screen barricades. However, the use of barricades is highly recommended.

\5\ No work of any kind, except to place or move items other than explosive materials from storage, shall be conducted in any building designated as a warehouse. A fireworks plant warehouse is not subject to §55.222 or this section, tables of distances.

§ 55.224 [Amended]

Par. 28. Section 55.224 is amended by removing "special fireworks" wherever it appears and adding in its place "display fireworks", and by adding footnote reference "3" after "2" in the title heading for the third column of the table.

Signed: May 28, 1998.

John W. Magaw,

Director.

Approved: July 14, 1998.

John P. Simpson,

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

[FR Doc. **98-21867 Filed 8-21-98**; 8:45 am]

TITLE 27 ALCOHOL, TOBACCO PRODUCTS AND FIREARMS
CHAPTER 1 BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT
OF THE TREASURY

T.D. ATF 401

27 CFR Part 178

Implementation of Public Law 104208, Omnibus Consolidated

Appropriations Act of 1997

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 co-habitated 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 record keeping 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]

TITLE 27  ALCOHOL, TOBACCO PRODUCTS AND FIREARMS 
CHAPTER 1  BUREAU OF ALCHOL, TOBACCO AND FIREARMS, DEPARTMENT
OF THE TREASURY

**Posting of Signs and Written Notification to Purchasers
of Handguns T.D. ATF-402**

27 CFR Part 178

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 non-licensed 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, 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 "[inclusion 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 record keeping 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:

§ 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 non-licensee shall provide such non-licensee 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 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 non-licensee on ATF I 5300.2, or in the alternative, the same written notification may be delivered to the non-licensee 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 non-licensee. Any written notification delivered to a non-licensee 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 non-licensee 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 non-licensees are to non-licensees 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).

[FR Doc. 98-18546 Filed 7-10-98; 8:45 am]

Announcements - VI

Announcement 98-6

Major Disaster Areas Proclaimed by the President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected as identified by the Administrator, Federal Emergency Management Agency (FEMA) are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters, may be paid an amount equal to the internal revenue taxes and customs duties paid on such products,

as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the District Director (Regulatory Enforcement Operations), Bureau of Alcohol, Tobacco and Firearms, for the ATF district in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

FLORIDA 1223 June 29, 1998

Type of Disaster: Fire

Counties: Alachua, Baker, Bay, Bradford, Broward, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, Dade, DeSoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsen, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Santa Rosa, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, Walton and Washington

INDIANA 1234 August 17, 1998

Type of Disaster: Severe storms, tornadoes and flooding

Counties: Benton, Clay, Crawford, Fayette,

Franklin, Gibson, Greene,

Howard, Knox, Lawrence, Madison, Miami, Monroe, Montgomery, Orange, Owen, Parke, Pike, Putnam, Rush, Sullivan, Union, Vigo, Warren and Wayne

IOWA 1230 August 17, 1998

Type of Disaster:

Counties: Adair, Appanoose, Buena Vista, Cedar, Cerro Gordo, Clay, Clayton, Clinton, Decatur, Delaware, Des Moines, Dickinson, Emmet, Floyd, Franklin, Greene, Hancock, Henry, Humbolt, Jasper, Kossuth, Lucas, Mahaska, Palo Alto, Pocahontas, Union, Wapello, Webster, Winnebago and Wright

KANSAS 3126 June 29, 1998

Type of Disaster: Explosion

Counties: Harvey and Sedgwick

MASSACHUSETTS 1224 July 14, 1998

Type of Disaster: Heavy rains and flooding

Counties: Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk and Worcester

MICHIGAN 1226 August 17, 1998

Type of Disaster: Severe storms and straight-line winds

Counties: Bay, Clinton, Gratiot, Ionia, Kent, Mason, Montcalm, Muskegon, Newaygo, Oceana, Ottawa, Saginaw and Shiawassee

MICHIGAN 1237 August 28, 1998

Type of Disaster: Severe storms and high winds

Counties: Macomb and Wayne

MINNESOTA 1225 July 14, 1998

Type of Disaster: Severe storms, straight-line winds and tornadoes

Counties: Anoka, Blue Earth, Carver, Dakota, Hennepin, Ramsey, Scott and Washington

NORTH CAROLINA 1240 September 9, 1998

Type of Disaster: Hurricane Bonnie

Counties: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Greene, Hyde, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrell, Washington and Wayne

NORTH DAKOTA 1220 June 29, 1998

Type of Disaster: Flooding and ground saturation

Counties: Barnes, Benson, Cass, Dickey, LaMoure, Nelson, Pembina, Pierce, Ramsey, Ransom, Richland, Rolette, Sergeant, Stutsman, Towner and Walsh

Indian Reservations: Spirit Lake Sioux Tribe and Turtle Mountain Band of Chippewa

OREGON 1221 August 17, 1998

Type of Disaster: Flooding

County: Crook

SOUTH DAKOTA 1218 June 19, 1998

Type of Disaster: Flooding, severe storms and tornadoes

Counties: Brown, Clark, Codington, Day,

Hanson, Marshall, McCook,

Roberts, Spink

TENNESSEE 1235 August 14, 1998

Type of Disaster: Flooding and severe storms

Counties: Lawrence and Lewis

WISCONSIN 1236 August 14, 1998

Type of Disaster: Severe storms, straight-line winds, tornadoes, heavy rain and flooding

Counties: Buffalo, Clark, Crawford, Dunn, Grant, Jackson, La Crosse, Monroe, Pepin, Pierce, Richland, St. Croix, Trempealeau and Vernon

WISCONSIN 1238 September 1, 1998

Type of Disaster: Severe storms and flooding

Counties: Milwaukee, Racine, Rock, Sheboygan and Waukesha

AMENDMENTS TO PREVIOUSLY DECLARED DISASTERS

CALIFORNIA 1203 Amendment

County: Del Norte

KENTUCKY 1216 Amendment

County: Letcher

NEW HAMPSHIRE 1231 Amendment

County: Hillsborough

NEW YORK 1222 Amendment

Counties: Broome and Wyoming

NEW YORK 1233 Amendment

Counties: Allegheny and Genesee

OHIO 1227 Amendment

Counties: Athens, Belmont, Guernsey, Jackson, Jefferson, Knox, Meigs, Morrow, Muskingum, Noble, Ottawa and Washington

PENNSYLVANIA 1219 Amendment

Counties: Allegheny, Beaver, Berks, Somerset and Wyoming

TEXAS 1239 Amendment

Counties: Kinney, Maverick, Real, Uvalde, Val Verde and Webb

WEST VIRGINIA 1229 Amendment

Counties: Braxton, Cabell, Calhoun, Clay, Doddridge, Gilmer, Harrison, Jackson, Kanawha, Lewis, Marion, Marshall, Ohio, Pleasants, Ritchie, Roane, Tyler, Webster, Wetzel, Wirt, Wood

ANNOUNCEMENT 98-7

MUZZLE LOADING WEAPONS THAT USE A MODERN IGNITION SYSTEM

On November 6, 1997, the Director signed Industry Circular No. 98-2. It read as follows:

All Federal firearms licensees and others concerned.

Purpose. The purpose of this circular is to clarify the Bureau of Alcohol, Tobacco and Firearms (ATF) position regarding the classification of muzzle loading weapons that use modern primers for ignition.

ATF has recently received a number of inquiries regarding whether "in line" muzzle loading weapons that have been designated or redesigned to use modern firearm primers are classified as firearms under the Gun Control Act. An "in line" muzzle loading weapon is a muzzle loading firearm designed such that the firing mechanism (striker) is located directly behind the barrel. The striker moves forward in line with the bore of the weapon.

Background. Section 921 (a) (3) (A), Title 18, U.S.C., defines the term firearm to include any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive. The frame or receiver of any such weapon is also a firearm as defined. However, antique firearms are excluded from this definition.

Section 921 (a) (16), Title 18, U.S.C., defines the term antique firearm as:

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(B) any replica of any firearm described in subparagraph (A) if such replica

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

Section 921 (a) (17) (A), Title 18, U.S.C., defines the term ammunition to include cartridge cases, primers, bullets and propellant powder designed for use in any firearms.

Discussion. The cited definitions make it clear that weapons

actually manufactured in or before 1898 are not subject to regulation as firearms. Further, modern replicas of antique firearms using an antique form of ignition such as matchlock, flintlock, or percussion cap are also not subject to regulation as firearms.

However, muzzle loading weapons with "in line" firing mechanisms designed or redesigned to use modern conventional firearm primers do not meet the definition of antique firearms and are subject to regulation as a firearm. Primers are not an antique ignition system and are ammunition for firearms subject to regulation.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to: Chief, Firearms Technology Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

ANNOUNCEMENT 98-8

OFFERS IN COMPROMISE

<i>Company/Individual Location</i>	<i>Amount</i>	<i>Alleged</i>
Arundel International Munitions, Inc. Annapolis, MD	\$2,000	Failure to pay excise tax, penalties and interest as a manufacturer of ammunition
C and C Distributors, Inc. West Greenwich, RI	\$2,500	Imported wine and malt beverages without a basic importer's permit
Nan Yang Trading Company, Inc. Maspeth, NY	\$1,500	Imported and sold distilled spirits and wine without a basic permit
Quantum Chemical Company	\$5,000	Discrepancy in the payment of excise taxes due to the use of incorrect proof figures. This resulted in overpayments and underpayments of excise tax and the preparation of incorrect records.
Rhode Island Distributing Company T/A Providence	\$6,500	Altering Certificate of Label Approval on six importations of wine, and by also importing wine on two occasions without first obtaining approved Certificates of Label Approval.

Beverage Company
West Greenwich, RI

Simunition Limited
Ocoee, FL

\$150,000

Failure to pay excise tax upon the importation of
ammunition

ANNOUNCEMENT 98-9

REVOCATIONS

Permittees not engaged in the operations authorized by their permit for a period of more than (2) years are subject to revocation. The following permit(s) have been revoked for this reason.

Company/Location Company/Location

George C. Doran Eric M. Price, III

Levittown, PA Upper Darby, PA

(Alcohol Fuel Producer) (Wholesaler and Importer)

Italian and French Wine Co.,

of Buffalo, Inc.

Buffalo, NY

(Wholesaler and Importer)

This was last updated on May 04, 1999