

## Subpart C — FIREARMS

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

**Implementation of Public Law 105-277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Relating to Firearms Disabilities for Nonimmigrant Aliens, and Requirement for Import Permit for Nonimmigrant Aliens Bringing Firearms and Ammunition Into the United States**

**27 CFR Part 178**

**[T.D. ATF-471]**

**RIN: 1512-AB93**

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

**ACTION:** Treasury decision; temporary rule.

**SUMMARY:** We are amending the regulations to implement the provision of Public Law 105-277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, relating to firearms disabilities for nonimmigrant aliens. These regulations implement the law by prohibiting, with certain exceptions, the transfer to and possession of firearms and ammunition by aliens in the United States in a nonimmigrant classification. In addition, we are amending the regulations to give the

Secretary of the Treasury or his delegate the authority to require non-residents bringing firearms and ammunition into the United States for hunting or sporting purposes to obtain an import permit. In the interest of national security and public safety, ATF will require nonimmigrant aliens to obtain import permits for all importations of firearms and ammunition into the United States (except for those exempt importations specified in the regulations) as of the effective date of this regulation. The temporary rule will remain in effect until superseded by final regulations.

In the same issue, but a separate part of this *Federal Register*, we are also issuing a notice of proposed rule-making inviting comments on the temporary rule for a 90-day comment period following the publication date of this temporary rule.

**DATES:** Effective February 19, 2002.

### **FOR FURTHER INFORMATION**

**CONTACT:** James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202-927-8210.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

*Public Law 105-277 – Firearms Disabilities for Nonimmigrant Aliens*

On October 21, 1998, Public Law 105-277 (112 Stat. 2681), Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (here-

after, "the Act"), was enacted. The Act amended the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). One of the new statutory provisions prohibits, with certain exceptions, the transfer to and possession of firearms and ammunition by aliens in the United States in a nonimmigrant classification. While this prohibition became effective upon the date of enactment, we have not been able to effectively enforce the prohibition without implementing regulations. One reason for the delay was the fact that language in the Act did not correspond with existing immigration law. Numerous meetings with the Department of Justice, including the Immigration and Naturalization Service (INS), were required to determine how to interpret and apply the Act. This includes enabling the National Criminal Instant Background Check System to query INS data on nonimmigrant aliens.

On September 11, 2001, grave acts of terrorism were committed against the United States by foreign terrorists, at least some of whom were in the United States in a nonimmigrant classification. On September 23, 2001, in Executive Order 13224 (published in the *Federal Register* on September 25, 2001 (66 FR 49079)), President Bush found these acts of terrorism, together with the "continuing and immediate threat of further acts on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." Immediate enhanced enforcement of the general prohibition on nonimmigrant aliens possessing and receiving firearms is necessary to counter this threat. The new statutory provision and the regulation changes necessitated by the law are as follows:

#### Firearms Disabilities for Nonimmigrant Aliens

Section 922(g)(5) of the GCA makes it unlawful for any person who is an alien illegally or unlawfully in the United States to ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, or possess any firearm or ammunition in or affecting commerce. Section 922(d)(5) makes 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 is an alien illegally or unlawfully in the United States.

The Act amended section 922(g)(5) and (d)(5) to expand the list of persons who may not lawfully ship, transfer, possess, or receive firearms or ammunition to include, with certain exceptions, aliens admitted to the United States under a nonimmigrant visa, as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)). A nonimmigrant visa does not itself provide nonimmigrant status. A visa simply facilitates travel, and expedites inspection and admission to the United States, by showing that the State Department does not believe the individual to be inadmissible and has authorized him or her to apply for admission at a U.S. port of entry. Moreover, just under fifty percent of nonimmigrant aliens need a nonimmigrant visa to enter the United States. All other nonimmigrant aliens fall within various categories which are exempt from needing a nonimmigrant visa (e.g., participation in the Visa

Waiver Program; Canadian visitors). The legislative history of the Act demonstrates Congress intended the new prohibition to cover all aliens in the United States in a nonimmigrant classification (as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15))), not merely nonimmigrants who possess a visa. Therefore, we interpret the Act to apply to any alien in the United States in a nonimmigrant classification and have provided an applicable definition of "nonimmigrant alien" in this temporary rule. This definition includes, in large part, persons traveling temporarily in the United States for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain foreign workers.

Furthermore, the prohibition is based on an alien's present status. Therefore, for example, if an alien was admitted to the United States in a nonimmigrant classification, but has become a permanent resident alien by the time he or she tries to purchase a firearm, he or she is not a prohibited person. The fact he or she was admitted in the nonimmigrant classification is not determinative.

The prohibition does not apply to aliens lawfully admitted for permanent residence. It also does not apply to any other alien who is not a nonimmigrant alien, including an alien who (1) has been granted asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158; (2) has been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5); or (3) has been admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act, 8 U.S.C. 1157. However, the prohibition

does apply to any alien in a nonimmigrant classification who has a pending asylum application. Note also that although the nonimmigrant prohibition does not apply to aliens who are illegally or unlawfully in the United States (including a nonimmigrant alien whose authorized period of stay has expired or who has violated the terms of the nonimmigrant category in which he or she was admitted) those aliens are subject to firearms and ammunition disabilities under the prohibition pertaining to aliens illegally or unlawfully in the United States, 18 U.S.C. 922(g)(5)(A).

As indicated, there are certain exceptions to the general rule. The prohibition does not apply if the non-immigrant alien is:

- (A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;
- (B) An official representative of a foreign government who is--
  - (1) Accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or
  - (2) En route to or from another country to which that alien is accredited;
- (C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or
- (D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

The temporary regulation provides that with respect to exception (A) above, "admitted to the United States for lawful hunting or sporting purposes" means: (1) is entering the United States to participate in a competitive target shooting event sponsored by a national, State, or local organization, devoted to the competitive use or other sporting use of firearms; or (2) is entering the United States to display firearms at a sports or hunting trade show sponsored by a national, State, or local firearms trade organization, devoted to the competitive use or other sporting use of firearms. We do not interpret the "admitted to" prong to cover persons entering the United States to hunt, because it would be difficult to verify this justification. Moreover, such persons can take steps to fall within the hunting license or permit exception.

With respect to exceptions B and C, the exceptions only apply to officials who are shipping, transporting, receiving, or possessing firearms or ammunition in their official capacity. Therefore, exception B does not apply, for example, to a diplomat who wants to possess a firearm to go hunting for pleasure (although the diplomat would qualify under exception A if he or she possessed a hunting license or permit lawfully issued in the United States). This limitation will not apply to distinguished foreign visitors who are private citizens and therefore do not have an official capacity.

Finally, with regard to exception D, we interpret a "friendly foreign government" to be any government with whom the United States has diplomatic relations and whom the United States does not identify as a State sponsor of terrorism.

In addition, the law gives the Attorney General the authority to waive

the prohibition upon approval of a petition filed by the nonimmigrant alien. The waiver provision will be addressed in regulations issued by the Department of Justice.

As with the nonimmigrant alien disability in general, these exceptions apply only to aliens in lawful nonimmigrant status. For example, an alien who has overstayed his or her period of lawful admission is prohibited from purchasing or possessing a firearm regardless of whether or not the alien has a hunting license.

Several amendments have been made to § 178.124 to reflect changes to the Firearms Transaction Record, ATF Form 4473, which have been made to ensure prohibited nonimmigrant aliens do not obtain firearms from Federal firearms licensees. Specifically, every person must list on Form 4473 their country of citizenship, rather than just answering if they are a United States citizen. Moreover, any person who is not a United States citizen must include his or her INS-issued alien number or admission number on the Form 4473. In addition, for any nonimmigrant alien relying on an exception or waiver from the prohibition, the nonimmigrant must present applicable documentation establishing the exception or waiver and the licensee must note the type of documentation on the Form 4473 and attach a copy of the documentation to the form. Significantly, even if a non-immigrant alien falls within an exception to, or obtains a waiver from, the nonimmigrant alien prohibition contained in section 922(g)(5)(B), he or she cannot purchase a firearm from a Federal firearms licensee unless he or she satisfies the State of residency requirements. (*See* § 178.11, definition of "State of residence.")

We are also amending §§ 178.44 and 178.45 to require any nonimmigrant alien applying for a Federal firearms license or renewal of a Federal firearms license, including a collector's license, to provide applicable documentation that he or she falls within an exception to, or has obtained a waiver from, the nonimmigrant alien prohibition. This requirement will apply, in the case of a corporation, partnership, or association, to any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association. This amendment is necessary to ensure ATF does not issue a license to any person who is prohibited from possessing a firearm or ammunition. This is consistent with 18 U.S.C. 923(d)(1)(B), which allows ATF to deny an application for license to any applicant who is prohibited from receiving firearms or any applicant whose officers or directors are so prohibited.

Moreover, we are amending the regulations to require any nonimmigrant alien who completes a Form 6 (or any licensee who completes a Form 6 to import firearms or ammunition for a nonimmigrant alien) to attach applicable documentation to the Form 6 establishing that the alien falls within an exception to, or has obtained a waiver from, the nonimmigrant alien prohibition. This is necessary to ensure we do not issue import permits to prohibited nonimmigrant aliens. We are also amending the regulations to require nonimmigrant aliens who fall within an exception to, or have obtained a waiver from, the nonimmigrant alien prohibition to provide applicable documentation to the United States Customs Service establishing the exception or waiver, before importing or bringing a

firearm or ammunition into the United States. This requirement applies whether or not the nonimmigrant is required to complete a Form 6. This is necessary to ensure prohibited non-immigrant aliens do not possess firearms or ammunition in the United States.

Conforming changes to the regulations are prescribed in §§ 178.11, 178.32, 178.99, 178.120, and 178.124.

### **Public Law 105-277 – Additional Provisions**

The Act amended the GCA to require, with certain exceptions, applicants for dealer's licenses to certify that secure gun storage or safety devices will be available at any place where firearms are sold to nonlicensees. The law also amended certain definitions in the GCA, including "antique firearm," "rifle," and "shotgun." Proposed regulations implementing these provisions of the Act will be addressed in a separate forthcoming rulemaking document.

### *Importation of Firearms and Ammunition by Nonresidents of the United States*

This temporary rule amends section 178.115(d)(2)-(d)(5) and section 178.115(e). Section 178.115(d)(2)-(d)(5) states that the importation of firearms and ammunition by certain foreign military personnel, official representatives of foreign governments, distinguished foreign visitors, and foreign law enforcement officers of friendly foreign governments are considered exempt importations for which an ATF Form 6 (an application to import a firearm or ammunition) is not required. Section 178.115(e) states that

notwithstanding section 178.115(d)(2)-(d)(5), the Secretary of the Treasury may in the interest of public safety and necessity require a permit for the importation of firearms and ammunition. This regulation adds those persons covered by section 178.115(d)(1) to those persons to which section 178.115(e) applies.

Section 178.115(d)(1) states that the importation of firearms and ammunition by nonresidents of the United States for legitimate hunting or lawful sporting purposes (if the firearms and ammunition are taken out of the United States when the shooting activity is concluded) is considered an exempt importation for which an ATF Form 6 is not required. As of the effective date of this regulation, ATF will require nonimmigrant aliens to obtain import permits for all importations of firearms and ammunition into the United States, except for those exempt importations listed in section 178.115(d)(2)-(d)(5). This will ensure these individuals do not fall within the nonimmigrant alien prohibition. It will also enable ATF to be aware of non-immigrant aliens who are bringing or attempting to bring firearms or ammunition into the United States. Finally, it will ensure non-importable firearms and ammunition do not enter the United States.

ATF also is amending section 178.115(d)(2)-(d)(5). In the interest of national security and public safety, these provisions are being amended so that they only apply if the firearms and unexpended ammunition are taken back out of the territorial limits of the United States when the person who brought them in leaves the country.

### **How This Document Complies With the Federal Administrative Requirements for Rulemaking**

#### *A. Executive Order 12866*

We have determined that this temporary rule is not a significant regulatory action as defined in Executive Order 12866, in part, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

#### *B. Administrative Procedure Act*

In light of the recent terrorist attack on America by persons, at least some of whom were nonimmigrant aliens, and the continuing and immediate threat of further attacks on United States nationals or the United States, which the President has found constitute an "unusual and extraordinary threat to the national security, foreign policy, and economy of the United States," we have found it to be impracticable and contrary to the public interest 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). Moreover, the amendments are excluded from the rulemaking provisions of 5 U.S.C. 553 because they involve a foreign affairs function of the United States. Accordingly, it is not necessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitations in 5 U.S.C. 553(d).

#### *C. 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 paperwork burdens associated with compliance

with the regulation are not significant. Accordingly, a regulatory flexibility analysis is not required.

#### *D. Paperwork Reduction Act*

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed 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 1512-0570. 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 collections of information in this regulation are in sections 27 CFR 178.44, 178.45, 178.120, and 178.124.

This information is required to ensure compliance with the provisions of Public Law 105-277. The collections of information are mandatory. The likely respondents are individuals and businesses.

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

#### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory

action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the *Federal Register* in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### **Drafting Information**

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

#### **List of Subjects in Part 178**

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Nonimmigrant aliens, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

#### **Authority and Issuance**

For the reasons discussed in the preamble, ATF amends 27 CFR Part 178 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), Pub. L. 104-208 (110 Stat. 3009), and Pub. L. 105-277 (112 Stat. 2681).

\* \* \* \* \*

**Par. 3.** Section 178.11 is amended by adding definitions for "Admitted to the United States for lawful hunting or sporting purposes," "Alien," "Friendly foreign government," "Hunting license or permit lawfully issued in the United States," and "Nonimmigrant alien" to read as follows:

**§ 178.11 Meaning of terms.**

\* \* \* \* \*

*Admitted to the United States for lawful hunting or sporting purposes.*

(a) Is entering the United States to participate in a competitive target shooting event sponsored by a national, State, or local organization, devoted to the competitive use or other sporting use of firearms; or

(b) Is entering the United States to display firearms at a sports or hunting trade show sponsored by a national, State, or local firearms trade organization, devoted to the competitive use or other sporting use of firearms.

*Alien.* Any person not a citizen or national of the United States.

\* \* \* \* \*

*Friendly foreign government.* Any government with whom the United States has diplomatic relations and whom the United States has not identified as a State sponsor of terrorism.

\* \* \* \* \*

*Hunting license or permit lawfully issued in the United States.* A license or permit issued by a State for hunting which is valid and unexpired.

\* \* \* \* \*

*Nonimmigrant alien.* An alien in the United States in a nonimmigrant classification as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

\* \* \* \* \*

**Par. 4.** Section 178.32 is amended by revising paragraphs (a)(5) and (d)(5), and by adding new paragraph (f) to read as follows:

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

(a) \* \* \*

(5) Being an alien-

(i) Is illegally or unlawfully in the United States; or

(ii) Except as provided in paragraph (f) of this section, is a nonimmigrant alien: *Provided*, That the provisions of this paragraph (a)(5)(ii) do not apply to any nonimmigrant alien if that alien is --

(A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or is en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business,

or is in possession of a hunting license or permit lawfully issued in the United States;

(B) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business,

\* \* \* \* \*

(d) \* \* \*

(5) Being an alien-

(i) Is illegally or unlawfully in the United States; or

(ii) Except as provided in paragraph (f) of this section, is a nonimmigrant alien: *Provided*, That the provisions of this paragraph (d)(5)(ii) do not apply to any nonimmigrant alien if that alien is -

(A) Admitted to the United States for lawful hunting or sporting purposes

\* \* \* \* \*

(f) Pursuant to 18 U.S.C. 922(y)(3), any nonimmigrant alien may receive a waiver from the prohibition contained in paragraph (a)(5)(ii) of this section, if the Attorney General approves a petition for the waiver.

**Par. 5.** Section 178.44 is amended by revising paragraph (a), by adding a new sentence in paragraph (b) after the second sentence, and by adding a parenthetical text at the end of the section to read as follows:

**§ 178.44 Original license.**

(a)(1) Any person who intends to engage in business as a firearms or ammunition importer or manufacturer, or firearms dealer, or who has not previously been licensed under the provisions of this part to so engage in business, or who has not timely submitted an application for renewal of the previous license issued under this part, must file an application for license, ATF Form 7 (Firearms), in duplicate, with ATF in accordance with the instructions on the form. The application must:

(i) Be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924;

(ii) Include a photograph and fingerprints as required in the instructions on the form;

(iii) If the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is a nonimmigrant alien, applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver);

(iv) Be accompanied by a completed ATF Form 5300.37 (Certification of Compliance with State and Local Law) and ATF Form 5300.36 (Notification of Intent to Apply for a Federal Firearms License); and

(v) Include the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms.

(2) ATF Forms 7 (Firearms), ATF Forms 5300.37, and ATF Forms 5300.36 may be obtained by contacting any ATF office.

(b) \* \* \* If the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is a nonimmigrant alien, the application must include applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver). \* \* \*

(Paragraphs (a) and (b) approved by the Office of Management and Budget under control number 1512-0570)

**Par. 6.** Section 178.45 is amended by adding a new sentence after the first sentence and by adding a parenthetical text at the end of the section to read as follows:

**§ 178.45 Renewal of license.**

\* \* \* If the applicant is a non-immigrant alien, the application must include applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the non-immigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver). \* \* \*

(Approved by the Office of Management and Budget under control number 1512-0570)

**Par. 7.** Section 178.99(c)(5) is revised to read as follows:

**§ 178.99 Certain prohibited sales or deliveries.**

\* \* \* \* \*

(c) \* \* \*

(5) Is an alien illegally or unlawfully in the United States or, except as provided in § 178.32(f), is a nonimmigrant alien: *Provided*, That the provisions of this paragraph (c)(5) do not apply to any nonimmigrant alien if that alien is -

(i) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(ii) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(iii) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(iv) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business;

\* \* \* \* \*

**Par. 8.** Section 178.115 is amended by revising paragraphs (d)(2) through (d)(5) and by removing "(d)(2)," in paragraph (e) and adding in its place "(d)(1), (2)," to read as follows:

**§ 178.115 Exempt importation.**

\* \* \* \* \*

(d) \* \* \*

(2) Foreign military personnel on official assignment to the United States who bring such firearms or ammunition into the United States for their exclusive use while on official duty in the United States, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such foreign military personnel when they leave the United States;

(3) Official representatives of foreign governments who are accredited to the U.S. Government or are en route to or from other countries to which accredited, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such official representatives of foreign governments when they leave the United States;

(4) Officials of foreign governments and distinguished foreign visitors who have been so designated by the Department of State, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such officials of foreign governments and distinguished foreign visitors when they leave the United States; and

(5) Foreign law enforcement officers of friendly foreign governments

entering the United States on official law enforcement business, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such foreign law enforcement officers when they leave the United States.

\* \* \* \* \*

**Par. 9.** Section 178.120 is added to Subpart G to read as follows:

**§ 178.120 Firearms or ammunition imported by or for a nonimmigrant alien.**

(a) Any nonimmigrant alien who completes an ATF Form 6 to import firearms or ammunition into the United States, or any licensee who completes an ATF Form 6 to import firearms or ammunition for a nonimmigrant alien, must attach applicable documentation to the Form 6 (e.g., a hunting license or permit lawfully issued in the United States; waiver) establishing the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien prohibition.

(b) Nonimmigrant aliens importing or bringing firearms or ammunition into the United States must provide the United States Customs Service with applicable documentation (e.g., a hunting license or permit lawfully issued in the United States; waiver) establishing the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien prohibition before the firearm or ammunition may be imported. This provision applies in all cases, whether or not a Form 6 is needed to bring the firearms or ammunition into the United States.

(Approved by the Office of Management and Budget under control number 1512-0570)

**Par. 10.** Section 178.124 is amended by removing "whether the transferee is a citizen of the United States;" in paragraph (c)(1) and adding in its place "the transferee's country of citizenship; the transferee's INS-issued alien number or admission number;" by removing "and alien registration number (if applicable)" in paragraph (c)(2); by redesignating paragraph (c)(3)(iii) as paragraph (c)(3)(iv); by adding new paragraph (c)(3)(iii); and by revising the parenthetical text at the end of the section to read as follows:

**§ 178.124 Firearms transaction record.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iii) Must, in the case of a transferee who is a nonimmigrant alien who states that he or she falls within an exception to, or has a waiver from, the nonimmigrant alien prohibition, have the transferee present applicable documentation establishing the exception or waiver, note on the Form 4473 the type of documentation provided, and attach a copy of the documentation to the Form 4473.

\* \* \* \* \*

(Paragraph (c) approved by the Office of Management and Budget under control numbers 1512-0544, 1512-0129, and 1512-0570; paragraph (f) approved by the Office of Management and

Budget under control number 1512-0130; all other recordkeeping approved by the Office of Management and Budget under control number 1512-0129)

Signed: January 15, 2002.

**Bradley A. Buckles,**

*Director.*

Approved: January 15, 2002.

**Timothy E. Skud,**

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

(Filed with the Office of the Federal Register on 2-1-02 at 8:45 a.m. as FR Doc. 02-2714; published in the *Federal Register* on 2-5-02 at 67 FR 5427.)

