

## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 178

[T.D. ATF-389]

RIN 1512-AB66

## Residency Requirements for Persons Acquiring Firearms (97R-687P)

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

**ACTION:** Temporary rule (Treasury decision).

**SUMMARY:** This temporary rule amends the regulations to provide for a firearms purchaser's affirmative statement of his or her State of residence on ATF Form 4473 (Firearms Transaction Record) and ATF Form 5300.35 (Statement of Intent to Obtain a Handgun) in acquiring a firearm from a Federal firearms licensee. The temporary rule also amends the regulations to require that aliens purchasing a firearm provide proof of residency through the use of substantiating documentation, such as utility bills or a lease agreement. In addition, the regulations are being amended to require that licensees examine a photo identification document from aliens purchasing firearms. Finally, the definition of "State of residence" is being amended to eliminate the language allowing aliens to establish residency by obtaining a letter from their embassy or consulate. The definition is also being amended to define more clearly "State of residence." These regulations implement President Clinton's March 5, 1997, announcement of firearms initiatives intended to protect the American public from gun violence. The temporary rule will remain in effect until superseded by final regulations.

In the same separate part 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.

**DATES:** The temporary regulations are effective April 21, 1997. Comments are due July 21, 1997.

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

**FOR FURTHER INFORMATION CONTACT:** James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue,

NW., Washington, DC 20226 (202-927-8230).

## SUPPLEMENTARY INFORMATION:

## Background

On February 23, 1997, Ali Hassan Abu Kamal, a nonresident alien legally in the United States, opened fire on a group of tourists at the Empire State Building in New York City. Abu Kamal killed one individual and wounded six others before turning the firearm on himself and committing suicide. Abu Kamal entered the United States legally approximately 30 days prior to the incident. He acquired an identification card issued by the State of Florida that appeared to identify him as a resident of Florida. The address listed on the card turned out to be the address of a Florida hotel. Abu Kamal used the identification card to purchase a handgun from a licensed dealer in Florida which he transported to New York and used in the shooting incident.

Abu Kamal clearly was not a "resident" as that term is defined in the regulations in 27 CFR 178.11, since he had not resided in Florida for 90 days before the purchase of the handgun. However, the Firearms Transaction Record, ATF Form 4473, does not require an affirmative statement of a purchaser's State of residence or information documenting an alien's residence in the State of purchase for a period of 90 days.

The shooting by Abu Kamal is only one of a growing number of incidents involving the illegal acquisition of firearms by aliens. ATF has investigated a number of crimes committed by juveniles and gang members with firearms that are traced back to alien purchasers. ATF investigations also reveal that aliens frequently purchase firearms in the United States that are illegally exported.

In response to the Empire State Building tragedy, on March 5, 1997, the President directed Treasury Secretary Robert E. Rubin to restrict gun access by foreign visitors and to tighten up the residency requirements of the Federal firearms laws. Specifically, the President directed the Secretary to amend the forms completed by firearms purchasers to require them to affirmatively identify their State of residence. In the case of aliens legally in the United States, they would generally have to be a resident of the State where the sale takes place for the 90-day period preceding the sale. The President also directed that the regulations be amended to require that aliens purchasing firearms provide licensed gun dealers with proof of residency,

such as utility bills, in addition to photo identification.

Section 922(b)(3) of the Gun Control Act of 1968 (GCA) makes it unlawful for a Federal firearms licensee (FFL) to sell or deliver any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in the State in which the licensee's place of business is located. An exception is provided for over-the-counter transfers of a rifle or shotgun to out-of-State residents if the transfer fully complies with the State laws of the buyer and seller. Regulations which implement section 922(b)(3) are contained in 27 CFR 178.99(a).

Prior to making a transfer of a firearm to a nonlicensed individual, the regulations (27 CFR 178.124(c)) require the licensee to obtain a Form 4473 (Firearms Transaction Record) from the transferee (buyer) showing certain information, including the name, address, date and place of birth. Paragraph (c)(1) of this section provides that before transferring a firearm over-the-counter, the licensee must obtain from the transferee documentation establishing the purchaser's identity. However, existing regulations do not require that the licensee obtain from the transferee documentation establishing the purchaser's State of residence.

The term "State of residence" is defined in 27 CFR 178.11 as follows:

The State in which an individual regularly resides, or maintains a home, or if such person is on active duty as a member of the United States Armed Forces, the State in which the person's permanent duty station is located: *Provided*, That an alien who is legally in the United States shall be considered to be a resident of the State in which (a) the alien is residing or has so resided for a period of at least 90 days prior to the date of sale or delivery of a firearm, or (b) the alien's embassy or consulate is located if the principal officer of such embassy or consulate issues a written statement to such alien authorizing the alien to acquire a firearm. Temporary stay in a State does not make the State of temporary stay the State of residence.

The Brady law, 18 U.S.C. § 922(s), generally imposes a waiting period of 5 business days before a licensee may sell, deliver, or transfer a handgun to a nonlicensed individual. Regulations implementing the Brady law require that, in States subject to the 5-day waiting period, licensees obtain a statement of the transferee's intent to obtain a handgun (ATF Form 5300.35) containing, among other information, the transferee's name, address, and date of birth appearing on a valid photo identification.

### Temporary Regulations

In general, this temporary rule amends the regulations to require a firearms purchaser's affirmative statement of his or her State of residence on ATF Form 4473 and to request this information on ATF Form 5300.35 when acquiring a firearm from a Federal firearms licensee. In addition, in the case of an alien who is legally in the United States, the temporary rule will require the purchaser to provide the licensee with proof of residency through the use of substantiating documentation, such as utility bills or a lease agreement, which show that the individual has resided in the State continuously for at least 90 days prior to the transfer of the firearm. The regulations are also being amended to require that licensees obtain a photo identification document from aliens purchasing firearms. Photo identification is already required for handgun purchases by nonlicensees, including aliens (see 18 U.S.C. § 922(s)(1)) and 27 CFR 178.102(a)). The regulation extends the photo identification requirement to ALL firearms purchases by aliens.

Specifically, ATF is amending 27 CFR 178.124(c) to provide that, prior to making an over-the-counter transfer of a firearm, the licensee must obtain from the transferee a completed ATF Form 4473 (Firearms Transaction Record) which shows certain information, including an affirmative statement as to the transferee's State of residence. In addition, before transferring a firearm other than a rifle or shotgun, the licensee will, in the case of a nonlicensee who is an alien legally in the United States, obtain from the transferee documentation establishing that the transferee is a resident of the State in which the licensee's business premises is located. The licensee will also note on the form the documentation used. Examples of acceptable documentation include utility bills or a lease agreement which show that the purchaser has resided in the State continuously for at least 90 days prior to the transfer of the firearm.

Section 178.124(d), relating to an over-the-counter transfer of a shotgun or rifle, is being amended to require alien purchasers to present to the licensee documentation establishing that the transferee is a resident of any State and has resided in such State continuously for at least 90 days prior to the transfer of the firearm. Examples of acceptable documentation include utility bills or a lease agreement.

The regulations also require that licensees obtain a government issued photo identification document, as

defined in § 178.11, from the alien purchaser. The licensee will note on the Form 4473 the documentation used.

Because the law permits the loan or rental of a firearm for temporary use for lawful sporting purposes to a nonlicensee who is not a resident of the State in which the licensee's business premises is located, 27 CFR 178.124(e) is being amended to provide that the residency requirements in paragraph (c)(1)(ii) do not apply to such transfers.

Section 178.124(f) specifies procedures for licensees transferring firearms to nonlicensees in non-over-the-counter transactions (e.g., mail order sales). This regulation is being amended to specifically make reference to the residency requirements on ATF Form 4473 for persons acquiring firearms.

With respect to the transfer of firearms curios or relics by licensed collectors to nonlicensees, a Form 4473 is not required. However, licensed collectors are required to maintain records of acquisition and disposition of firearms and to obtain identification from unlicensed transferees. Section 178.125 is being amended to provide that the licensee will, in the case of a transferee who is an alien legally in the United States, obtain from the transferee documentation establishing that the transferee is a resident of the State in which the licensee's business premises is located if the firearm curio or relic is other than a shotgun or rifle, or is a resident of any State and has resided in such State continuously for at least 90 days prior to the transfer of the firearm if the firearm curio or relic is a shotgun or rifle. This section is also being amended to require that licensed collectors obtain a government issued photo identification document from aliens purchasing firearms. The regulations will require the licensee to note on the Acquisition and Disposition Record the type of documentation and identification used. With respect to the residency requirement, examples of acceptable documentation include utility bills or a lease agreement which show that the transferee has resided in the State continuously for at least 90 days prior to the transfer of the firearm curio or relic.

ATF is also amending § 178.132(a)(2) with respect to the Statement of Intent to Obtain a Handgun (ATF Form 5300.35) to request that purchasers affirmatively state their State of residence. In the case of aliens who are legally in the United States, this would help identify those who do not meet the 90-day residency requirement. This information would be requested on the form because 18 U.S.C. § 922(s)(3) limits

the information that can be required to be disclosed on the form.

Finally, the definition of "State of residence" in § 178.11 is being amended to eliminate the language allowing aliens to establish residency by obtaining a letter from their embassy or consulate. This amendment is necessary because such a letter could be obtained by a person having no actual residence in a State or intent to reside in the United States. Thus, the only way an alien can be a "resident" is by residing in a State for a period of at least 90 days. In addition, the definition and the examples following the definition are being amended to define more clearly State of residency.

### Executive Order 12866

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

### Administrative Procedure Act

In light of the recent Empire State Building tragedy, the growing number of incidents involving the illegal acquisitions of firearms by aliens, and the immediate need to protect the American public from gun violence, it is found 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).

### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this temporary rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

### Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed 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 numbers 1512-0129 and 1512-0130 (§ 178.124); 1512-0387 (§ 178.125); and 1512-0520 (§ 178.130). 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 27 CFR 178.124, 178.125, and 178.130. This information is required to ensure that individuals purchasing firearms meet the residency requirements mandated by law. The likely respondents are individuals.

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 elsewhere in this issue of the **Federal Register**.

#### Drafting Information

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

#### List of Subjects in 27 CFR Part 178

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

#### Authority and Issuance

Accordingly, 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 178.11 is amended by revising the definition of “State of residence” to read as follows:

##### § 178.11 Meaning of terms.

*State of residence.* The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is on active duty as a member of the Armed Forces, the individual's State of residence is the State in which his or her permanent duty station is located. An alien who is legally in the United States shall be considered to be a resident of a State only if the alien is residing in the State and has resided in the State for a period of at least 90 days prior to the date of sale or delivery of

a firearm. The following are examples that illustrate this definition:

Example 1. A maintains a home in State X. A travels to State Y on a hunting, fishing, business, or other type of trip. A does not become a resident of State Y by reason of such trip.

Example 2. A is a U.S. citizen and maintains a home in State X and a home in State Y. A resides in State X except for weekends or the summer months of the year and in State Y for the weekends or the summer months of the year. During the time that A actually resides in State X, A is a resident of State X, and during the time that A actually resides in State Y, A is a resident of State Y.

Example 3. A, an alien, travels on vacation or on a business trip to State X. Regardless of the length of time A spends in State X, A does not have a State of residence in State X. This is because A does not have a home in State X at which he has resided for at least 90 days.

**Par. 3.** Section 178.124 is amended by revising the first sentence in the introductory text of paragraph (c), by revising paragraphs (c)(1), (d), and (e), and by revising the third sentence in paragraph (f) to read as follows:

##### § 178.124 Firearms transaction record.

(c) Prior to making an over-the-counter transfer of a firearm to a nonlicensee who is a resident of the State in which the licensee's business premises is located, the licensed importer, licensed manufacturer, or licensed dealer so transferring the firearm shall obtain a Form 4473 from the transferee showing the name, address (including county or similar political subdivision), whether the transferee is a citizen of the United States, State of residence, date and place of birth, height, weight, and race of the transferee, and certification by the transferee that the transferee is not prohibited by the Act from transporting or shipping a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce. \* \* \*

(1)(i) Shall cause the transferee to be identified in any manner customarily used in commercial transactions (e.g., a driver's license), and shall note on the form the method used: *Provided*, That in the case of an alien legally in the United States, shall verify the identity of the transferee by examining an identification document (as defined in § 178.11), and shall note on the form the type of identification used;

(ii) Shall, in the case of a transferee who is an alien legally in the United

States, cause the transferee to present documentation establishing that the transferee is a resident of the State (as defined in § 178.11) in which the licensee's business premises is located, and shall note on the form the documentation used. Examples of acceptable documentation include utility bills or a lease agreement which show that the transferee has resided in the State continuously for at least 90 days prior to the transfer of the firearm; and

(2) \* \* \*  
(d) Prior to making an over-the-counter transfer of a shotgun or rifle under the provisions contained in § 178.96(c) to a nonlicensee who is not a resident of the State in which the licensee's business premises is located, the licensee so transferring the shotgun or rifle, and such transferee, shall comply with the requirements of paragraph (c) of this section: *Provided*, That in the case of a transferee who is an alien legally in the United States, the documentation required by paragraph (c)(1)(ii) of this section need only establish that the transferee is a resident of any State and has resided in such State continuously for at least 90 days prior to the transfer of the firearm. Examples of acceptable documentation include utility bills or a lease agreement. The licensee shall note on the form the documentation used.

(e) Prior to making a transfer of a firearm to any nonlicensee who is not a resident of the State in which the licensee's business premises is located, and such nonlicensee is acquiring the firearm by loan or rental from the licensee for temporary use for lawful sporting purposes, the licensed importer, licensed manufacturer, or licensed dealer so furnishing the firearm, and such transferee, shall comply with the provisions of paragraph (c) of this section, except for the provisions of paragraph (c)(1)(ii).

(f) \* \* \* The transferee also must date and execute the sworn statement contained on the form showing, in case the firearm to be transferred is a firearm other than a shotgun or rifle, the transferee is 21 years or more of age; in case the firearm to be transferred is a shotgun or rifle, the transferee is 18 years or more of age; whether the transferee is a citizen of the United States; the transferee's State of residence, and in the case of a transferee who is an alien legally in the United States, the transferee has resided in that State continuously for at least 90 days prior to the transfer of the firearm; the transferee is not prohibited by the provisions of the Act from shipping or transporting a firearm in interstate or

foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce; and the transferee's receipt of the firearm would not be in violation of any statute of the State or published ordinance applicable to the locality in which the transferee resides. \* \* \*

**Par. 4.** Section 178.125(f) is amended by removing the text following the seventh sentence and in its place adding a new phrase and paragraphs (f)(1) through (f)(3) to read as follows:

**§ 178.125 Record of receipt and disposition.**

\* \* \* \* \*

(f) *Firearms receipt and disposition by licensed collectors.* \* \* \* In addition, the licensee shall—

(1) Cause the transferee, if other than a licensee, to be identified in any manner customarily used in commercial transactions (e.g., a driver's license), and note on the record the method used, and

(2) In the case of a transferee who is an alien legally in the United States and who is other than a licensee—

(i) Verify the identity of the transferee by examining an identification document (as defined in § 178.11), and

(ii) Cause the transferee to present documentation establishing that the transferee is a resident of the State (as defined in § 178.11) in which the licensee's business premises is located if

the firearm curio or relic is other than a shotgun or rifle, and note on the record the documentation used or is a resident of any State and has resided in such State continuously for at least 90 days prior to the transfer of the firearm if the firearm curio or relic is a shotgun or rifle and shall note on the record the documentation used. Examples of acceptable documentation include utility bills or a lease agreement which show that the transferee has resided in the State continuously for at least 90 days prior to the transfer of the firearm curio or relic.

(3) The format required for the record of receipt and disposition of firearms by collectors is as follows:

**FIREARMS COLLECTORS ACQUISITION AND DISPOSITION RECORD**

Description of firearm					Receipt		Disposition					
Manufacturer and/or importer	Model	Serial No.	Type	Caliber or gauge	Date	Name and address or name and license No.	Date	Name and address or name and license No.	Date of birth if non-licensee	Driver's license No. or other identification if non-licensee	For transfers to aliens, documentation used to establish residency	

\* \* \* \* \*

**Par. 5.** Section 178.130(a)(2) is revised to read as follows:

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

(a)(1) \* \* \*

(2) In order to establish residency and to facilitate the transfer of a handgun and enable the chief law enforcement officer to verify the identity of the person acquiring the handgun, Form

5300.35 requests certain additional optional information. This information includes the social security number, height, weight, sex, alien registration number, whether the person is a citizen of the United States, State of residence, and place of birth of the transferee. Such information may help ensure the lawfulness of the sale and avoid the possibility of the transferee being misidentified as a felon or other prohibited person.

\* \* \* \* \*

Signed: April 4, 1997.

**John W. Magaw,**  
Director.

Approved: April 11, 1997.

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

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