

in disaster surveys, documentation, and processing would be reduced.

The disadvantages are:

(1) States with larger highway programs could lose some ER funding as the higher disaster eligibility threshold in these States might eliminate some disasters which would have qualified for funding under the current threshold; and

(2) The FHWA would be required to track States with different disaster eligibility thresholds, resulting in more review time and paperwork.

Commenters are invited to present their views on the options discussed above. In addition, the FHWA welcomes other suggestions concerning the current dollar threshold and appropriate methods to update this threshold.

#### *Rulemaking Analyses and Notices*

##### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined preliminarily that any action taken regarding the disaster eligibility threshold will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of any action taken in this rulemaking will be minimal. Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

The FHWA emphasizes, however, that this document is published to generate discussion and comments which may be used in formulating specific proposals for the revision of a section of the current regulation dealing with disaster eligibility determinations for ER funding. It is not anticipated that these changes will affect the total Federal funding available under the ER program. Consequently, a full regulatory evaluation is not required. In any event, we strongly encourage and will actively consider comments on this matter, as well as other issues relating to the projected impact of actions contemplated in this ANPRM.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA will evaluate the effects of any action proposed on small entities. This ANPRM will only generate comments

and discussions on one of the disaster eligibility criteria used for providing emergency relief assistance to States in accordance with the existing laws, regulations and guidance. Thus, it would be premature to assess the economic impact of any action that might be contemplated. Because the States are not included in the definition of "small entity" set forth in 5 U.S.C. 601, we do not anticipate that any adjustment to the disaster eligibility threshold that might be considered would have a substantial economic impact on small entities within the meaning of the Regulatory Flexibility Act. We encourage commenters to evaluate any options addressed here with regard to their potential for impact, however, and to formulate their comments accordingly.

#### *Executive Order 12612 (Federalism Assessment)*

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 12612. Given the nature of the issues involved in this proceeding, the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nor does the FHWA anticipate that any action taken would preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

#### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### *Paperwork Reduction Act*

Any action that might be contemplated in subsequent phases of this proceeding is not likely to involve a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3500, or information collection requirements not already approved for the ER program. The FHWA, however, will evaluate any actions that might be

considered in accordance with the terms of the Paperwork Reduction Act.

#### *National Environmental Policy Act*

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) to assess whether there would be any effect on the quality of the environment.

#### *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 April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### **List of Subjects in 23 CFR Part 668**

Emergency relief program, Grant programs-transportation, Highways and roads.

**Authority:** 23 U.S.C. 315; 23 U.S.C. 101; 23 U.S.C. 120(e); 23 U.S.C. 125; 49 CFR 1.48(6).

Issued on: February 11, 1998.

**Kenneth R. Wykle,**

*Administrator, Federal Highway Administration.*

[FR Doc. 98-4172 Filed 2-18-98; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Parts 178 and 179

[Notice No. 857]

RIN: 1512-AB67

#### **Implementation of Public Law 103-159, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act (93F-057P)**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to implement the provisions of Public Law 103-159, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. These proposed regulations implement the law by requiring, with some exceptions, a licensed firearms importer, manufacturer, or dealer to contact the

national instant criminal background check system (NICS) before transferring any firearm to an unlicensed individual. NICS will advise the licensee whether the system contains any information that the prospective purchaser is prohibited by law from possessing or receiving a firearm.

**DATES:** Written comments must be received on or before May 20, 1998.

**ADDRESSES:** Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; ATTN: Notice No. 857.

**FOR FURTHER INFORMATION CONTACT:** James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 30, 1993, Public Law 103-159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Pub. L. 103-159, the Brady Handgun Violence Prevention Act (the "Brady law"), imposed as an interim measure a waiting period of 5 days before a licensed importer, manufacturer, or dealer may sell, deliver, or transfer a handgun to an unlicensed individual. The waiting period applies only in States without an acceptable alternate system of conducting background checks on handgun purchasers. The interim provisions of the Brady law, 18 U.S.C. 922(s), became effective on February 28, 1994, and cease to apply on November 30, 1998.

*Permanent Provisions of the Brady Law*

The permanent provisions of the Brady law provide for the establishment of a national instant criminal background check system ("NICS") that a firearms licensee must contact before transferring any firearm to unlicensed individuals. The law requires that the permanent system be established not later than November 30, 1998. While the interim provisions apply only to handguns, the permanent provisions of the Brady law will apply to all firearms. Furthermore, while there is no five-day waiting period under the permanent provisions, the system may take up to three business days to notify the licensee whether receipt of a firearm by the prospective purchaser would be in violation of law.

*National Instant Criminal Background Check System*

The Brady law requires that the Attorney General establish a permanent national instant criminal background check system that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information on whether receipt of a firearm by a prospective transferee would violate Federal or State law. The law requires that the permanent system be established not later than November 30, 1998.

Upon establishment of the system, the Attorney General is required to notify each firearms licensee and the chief law enforcement officer of each State of the existence and purpose of NICS and the means to be used to contact NICS. Beginning on the date that is 30 days after the Attorney General notifies firearms licensees that NICS is established, the permanent provisions of Brady, 18 U.S.C. 922(t), become effective.

*Statutory Requirements*

Section 922(t) generally makes it unlawful for any licensed firearms importer, manufacturer, or dealer to sell, deliver, or transfer a firearm to an unlicensed individual (transferee), unless—

1. Before the completion of the transfer, the licensee contacts the national instant background check system;
2. The system provides the licensee with a unique identification number signifying that transfer of the firearm would not be in violation of law OR 3 business days (meaning a day on which State offices are open) have elapsed from the date the licensee contacted the system and the system has not notified the licensee that receipt of the firearm by the transferee would be in violation of law; and
3. The licensee verifies the identity of the transferee by examining a valid identification document containing a photograph of the transferee.

*Penalties for Noncompliance*

Section 922(t) provides that a firearms licensee who transfers a firearm and knowingly fails to comply with the requirements of the law, in a case where compliance would have revealed that the transfer was unlawful, may be subject to license suspension or revocation and fined not more than \$5,000.

*Proposed Regulations*

ATF is proposing regulations to implement the requirements placed on firearms licensees by section 922(t). The

Department of Justice will be promulgating regulations establishing the methods of operation for NICS, including policies and procedures for ensuring the privacy and security of the system, and appeal procedures for individuals who are determined by NICS to be ineligible to purchase a firearm. Accordingly, these issues are not addressed in the ATF regulations.

*Time of NICS Check*

The Brady law generally provides that a licensed importer, manufacturer or dealer may not transfer a firearm to an unlicensed individual unless, before the completion of the transfer, the licensee contacts NICS. It is clear that the law contemplates that the licensee should contact NICS immediately prior to the transfer of a firearm. ATF recognizes that there may be circumstances in which there is an unavoidable delay between the NICS check and the transfer of the firearm. For example, many States have waiting periods for the sale of certain types of firearms. Nonetheless, ATF believes that the regulations should impose a time frame beyond which a licensee can no longer rely upon a "stale" NICS check in transferring a firearm.

In accordance with the above, ATF is proposing to amend § 178.124(c) to require licensees to contact NICS after the transferee has executed the firearms transaction record, Form 4473. ATF is also proposing to amend § 178.102(c) to provide that a licensee may not rely upon a NICS check that was conducted more than 30 calendar days prior to the transfer of the firearm. This will ensure that licensees are not relying upon "stale" NICS checks. Finally, the proposed regulations clarify that a separate NICS check must be conducted for each separate transaction. While an individual may purchase several firearms in one transaction, a licensee must initiate a separate NICS check for each separate transaction. Examples are provided in section 178.102(c) of the proposed regulations.

Section 922(t)(2) provides that if NICS notifies the licensee that the information available to the system does not indicate that the prospective purchaser's receipt or possession of the firearm would violate the law, the system will assign a unique identification number to the transfer and provide the licensee with the number. The Department of Justice has advised ATF that NICS will also provide licensees with a unique identification number in the event that the transfer is denied or delayed by NICS. Accordingly, the proposed regulations require that licensees record any responses received from the system,

in addition to the unique identification number (if any) provided by the system, on the firearms transaction record (ATF Form 4473). The proposed regulations also require that licensees maintain a copy of each Form 4473 for which a NICS transaction number has been received, regardless of whether the transfer of the firearm was completed. This will enable ATF to determine compliance with the law by licensees and purchasers.

#### *Exceptions to NICS*

The statute provides the following exceptions to the national instant background check system:

1. The transferee presents to the licensee a permit which was issued not more than 5 years earlier by the State in which the transfer is to take place and which allows the transferee to possess or acquire a firearm, and the law of the State provides that such a permit is to be issued only after an authorized government official has verified that available information does not indicate that possession of a firearm by the transferee would be in violation of the law;
2. Purchases of firearms which are subject to the National Firearms Act and which have been approved for transfer under 27 CFR Part 179 (Machine Guns, Destructive Devices, and Certain Other Firearms); or
3. Purchases of firearms for which the Secretary has certified that compliance with NICS is impracticable because the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025 (i.e., 25 officers per 10,000 square miles), the premises of the licensee are remote in relation to the chief law enforcement officer of the area, and there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

Proposed regulations which implement these provisions of the law are set forth in §§ 178.102(d), 178.131, and 178.150.

It should be noted that State "instant check" and "point of sale check" systems will not qualify as alternatives to the NICS check required by the permanent provisions of the Brady law. Therefore, NICS checks must be conducted on firearms purchasers in those States.

With respect to purchases of firearms which are subject to the National Firearms Act, ATF is proposing to amend § 179.86 to provide that in addition to any other records checks that may be conducted to determine

whether the transfer, receipt, or possession of a firearm would place the transferee in violation of law, the Director must contact NICS.

#### *Permits*

The Brady law provides that a licensee is not required to initiate a NICS check where the purchaser presents a permit that allows the purchaser to "possess or acquire a firearm." The proposed regulations clarify that this exception includes permits to carry concealed weapons as well as permits specifically authorizing the purchase of a firearm.

For purposes of the permanent provisions of the Brady law, it is irrelevant whether the permit covers the type of firearm that is being purchased. For example, a licensee need not initiate a NICS check where an individual who wishes to purchase a rifle presents a handgun permit, as long as that permit meets all the requirements of the Brady law. The critical issue is not the type of firearm for which the permit was issued, but whether the State has conducted a background check on that individual to ensure that the individual is not prohibited from possessing a firearm. Of course, all such transactions must still comply with State law.

#### *NICS Checks in Conjunction With the Issuance of Permits*

The law provides that the permit must have been issued not more than 5 years earlier by the State in which the transfer is to take place. Furthermore, the permit is a valid alternative under the Brady law only if the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law.

In construing the language of the statute, it is ATF's position that as of November 30, 1998, "the information available to" State officials will include the NICS database. Accordingly, the proposed regulations provide that permits issued on or after November 30, 1998, will be valid alternatives under the permanent provisions of the Brady law only if the State officials conduct a NICS check on all permit applicants. It should be noted that the NICS database will provide a more extensive background check of the purchaser than other record systems containing only criminal records. NICS will include records from the Defense Department concerning dishonorable discharges, records from the State Department regarding individuals who have

renounced United States citizenship, and other information not available in criminal records.

#### *Permits Issued to Persons Prohibited Under Federal Law*

The proposed regulations provide that a permit would be a valid alternative only if the issuing State verifies that possession of a firearm by the permittee would not be in violation of Federal, State, or local law. There may be States that would issue a permit to individuals (such as persons who have renounced United States citizenship or persons convicted of a misdemeanor crime of domestic violence) even though these individuals are subject to Federal firearms disabilities. If a State does not disqualify all individuals prohibited under Federal law, the permits issued by that State would not be accepted as alternatives under the permanent provisions of the Brady law. Prior to the effective date of the permanent provisions of the Brady law, ATF will notify licensees in each State whether or not permits issued by that State will suffice as alternatives under the Brady law.

#### *Pawn Transactions*

The permanent provisions of the Brady law apply to any transfer of a firearm by a licensed importer, manufacturer, or dealer to a nonlicensee. This includes the redemption of a pawned firearm. It should be noted that the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, amended § 922(s) of the GCA to exempt transactions involving the return of a handgun to the person from whom it was received. Thus, the redemption of a pawned handgun by the person from whom it was received is not subject to the waiting period and background check requirements imposed by the interim provisions of the Brady law. However, no such exemption appears in § 922(t). Thus, the proposed regulations would apply the permanent provisions of the Brady law to pawn transactions.

#### *Firearms Transaction Record (Form 4473)*

In general, the regulations provide that prior to the transfer of a firearm to a prospective purchaser, the buyer must complete, sign, and date a firearms transaction record, Form 4473. The form requests certain information, including the transferee's name, sex, height, weight, race, residence address, date of birth, and place of birth. ATF is proposing to amend the regulations to solicit additional optional information about the purchaser, such as the

transferee's social security number and alien registration number (if applicable), to facilitate the transfer of a firearm.

ATF believes this additional information will help minimize the misidentification of firearms purchasers as felons or other prohibited persons whose receipt and possession would violate the law. For example, by providing a social security number, the transferee might avoid confusion with a prohibited buyer who has the same name and date of birth as the transferee. This would clearly help expedite the transfer. ATF would note that ATF Form 5300.35, Statement of Intent to Obtain a Handgun (Brady form), currently requests the purchaser's social security number and alien registration number as optional information. Because the NICS check will be based upon information from the Form 4473, the proposed regulations would not require firearms purchasers to fill out a separate Brady form.

#### *Executive Order 12866*

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a Regulatory Assessment is not required.

#### *Regulatory Flexibility Act*

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Accordingly, a regulatory flexibility analysis is not required.

#### *Paperwork Reduction Act*

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury/Bureau of Alcohol, Tobacco and Firearms (ATF), 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, NW., Washington, DC 20226. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of ATF, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed regulation are in §§ 178.102, 178.124(c), 178.125(e), 178.129(b), 178.131, and 178.150. This information is required to implement the provisions of Public Law 103-159, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. The collections of information are required to ensure compliance with the law. The likely respondents and/or recordkeepers are individuals and businesses.

*Estimated number of respondents:* 10,273,851.

*Estimated total annual reporting and/or recordkeeping burden:* 199,357 hours.

*Estimated average annual burden per respondent and/or recordkeeper:* 1.16 minutes.

Section 178.102 requires, with some exceptions, licensees to contact NICS before transferring any firearm to an unlicensed individual. The estimated total annual reporting and/or recordkeeping burden associated with this requirement is 112,978 hours. Section 178.124(c) requires licensees to record on Form 4473 the date the licensee contacts NICS and any identification number provided by NICS. The licensee must also verify the identity of the person acquiring the firearm by examining an identification document presented by the transferee. Form 4473 will include certain optional information about the purchaser, such as the person's social security number and alien registration number. The estimated total annual reporting and/or recordkeeping burden associated with this requirement is 53,549 hours. Section 178.125(e) requires licensees to include in their records of disposition the identification number provided by NICS. The estimated total annual reporting and/or recordkeeping burden associated with this requirement is 18,444 hours. Section 178.129(b) requires licensees to retain a completed Form 4473 for a period of not less than 5 years where the transfer of a firearm is not made. The estimated total annual

recordkeeping burden associated with this requirement is 553 hours. Section 178.131 requires licensees to maintain certain records for firearms transactions not subject to a NICS check. The estimated annual recordkeeping burden associated with this requirement is 13,833 hours. Section 178.150 provides for an alternative to NICS in certain geographical locations. Licensees must submit a written application to the Director containing certain information. The same requirement currently applies to the waiting period provision of the Brady law for transfers of handguns. Since this requirement was established in 1994, no licensee has qualified for an exception from the provisions of Brady based on geographical location. As such, ATF does not believe that there is any reporting and/or recordkeeping burden associated with the requirements of § 178.150 with regard to NICS.

Certain collections of information contained in § 178.129(b), previously approved under control numbers 1512-0520, 1512-0006, and 1512-0524, are merely being redesignated as § 178.129(c) in this notice of proposed rulemaking. Similarly, the collections of information in § 178.129(c), (d), and (e), previously approved under control numbers 1512-0129 and 1512-0526, are being redesignated as § 178.129(d), (e), and (f) in the proposed regulation.

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.

#### *Public Participation*

ATF requests comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to

determine, in light of all circumstances, whether a public hearing is necessary.

#### Disclosure

Copies of this notice and the written comments 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 James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

#### List of Subjects in 27 CFR Parts 178 and 179

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

#### Authority and Issuance

Accordingly, 27 CFR Parts 178 and 179 are amended as follows:

#### PART 178—COMMERCE IN FIREARMS AND AMMUNITION

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).

2. Section 178.11 is amended by adding a definition for "NICS" to read as follows:

#### § 178.11 Meaning of terms.

\* \* \* \* \*

*NICS.* The National Instant Criminal Background Check System established by the Attorney General pursuant to 18 U.S.C. 922(t).

\* \* \* \* \*

3. Section 178.96 is amended by revising the first sentence in paragraph (b), and by revising paragraph (c) to read as follows:

#### § 178.96 Out-of-State and mail order sales.

\* \* \* \* \*

(b) A licensed importer, licensed manufacturer, or licensed dealer may sell a firearm that is not subject to the provisions of § 178.102(a) to a nonlicensee who does not appear in person at the licensee's business premises if the nonlicensee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee furnishes to the licensee the firearms transaction record, Form 4473, required by § 178.124. \* \* \*

(c)(1) A licensed importer, licensed manufacturer, or licensed dealer may

sell or deliver a rifle or shotgun, and a licensed collector may sell or deliver a rifle or shotgun that is a curio or relic, to a nonlicensed resident of a State other than the State in which the licensee's place of business is located if—

(i) The purchaser meets with the licensee in person at the licensee's premises to accomplish the transfer, sale, and delivery of the rifle or shotgun;

(ii) The licensed importer, licensed manufacturer, or licensed dealer complies with the provisions of § 178.102;

(iii) The purchaser furnishes to the licensed importer, licensed manufacturer, or licensed dealer the firearms transaction record, Form 4473, required by § 178.124; and

(iv) The sale, delivery, and receipt of the rifle or shotgun fully comply with the legal conditions of sale in both such States.

(2) For purposes of paragraph (c) of this section, any licensed manufacturer, licensed importer, or licensed dealer is presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both such States.

4. Section 178.97 is revised to read as follows:

#### § 178.97 Loan or rental of firearms.

(a) A licensee may lend or rent a firearm to any person for temporary use off the premises of the licensee for lawful sporting purposes: *Provided*, That the delivery of the firearm to such person is not prohibited by § 178.99(b) or § 178.99(c), the licensee complies with the requirements of § 178.102, and the licensee records such loan or rental in the records required to be kept by him under Subpart H of this part.

(b) A club, association, or similar organization temporarily furnishing firearms (whether by loan, rental, or otherwise) to participants in a skeet, trap, target, or similar shooting activity for use at the time and place such activity is held does not, unattended by other circumstances, cause such club, association, or similar organization to be engaged in the business of a dealer in firearms or as engaging in firearms transactions. Therefore, the licensing and recordkeeping requirements contained in this part pertaining to firearms transactions would not apply to this temporary furnishing of firearms for use on premises on which such an activity is conducted.

5. Section 178.102 is revised to read as follows:

#### § 178.102 Sales or deliveries of firearms on and after November 30, 1998.

(a) *Background check.* Except as provided in paragraph (d) of this section, a licensed importer, licensed manufacturer, or licensed dealer shall not sell, deliver, or transfer a firearm to any other person who is not licensed under this part unless—

(1) Before the completion of the transfer, the licensee has contacted NICS;

(2)(i) NICS informs the licensee that it has no information that receipt of the firearm by the transferee would be in violation of Federal or State law and provides the licensee with a unique identification number; or

(ii) Three business days (meaning days on which State offices are open) have elapsed from the date the licensee contacted NICS and NICS has not notified the licensee that receipt of the firearm by the transferee would be in violation of law; and

(3) The licensee verifies the identity of the transferee by examining the identification document presented in accordance with the provisions of § 178.124(c).

(b) *Unique identification number.* In any transaction for which a licensee receives a unique identification number from NICS, such number shall be recorded on a firearms transaction record, Form 4473, which shall be retained in the records of the licensee in accordance with the provisions of § 178.129. This applies regardless of whether the transaction is approved or denied by NICS, and regardless of whether the firearm is actually transferred.

(c) *Time limitation on NICS checks.* A NICS check conducted in accordance with paragraph (a) of this section may be relied upon by the licensee only for use in a single transaction, and for a period not to exceed 30 calendar days. If the transaction is not completed within the 30-day period, the licensee shall initiate a new NICS check prior to completion of the transfer.

*Example 1.* A purchaser completes the Form 4473 on December 15, 1998, and a NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. However, the State imposes a 7-day waiting period on all firearms transactions, and the purchaser does not return to pick up the firearm until January 22, 1999. The licensee must conduct another NICS check before transferring the firearm to the purchaser.

*Example 2.* A purchaser completes the Form 4473 on January 25, 1999, and arranges

for the purchase of a single firearm. A NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. The State imposes a 7-day waiting period on all firearms transactions, and the purchaser returns to pick up the firearm on February 15, 1999. Before the licensee completes Section B of the Form 4473, the purchaser decides to purchase an additional firearm. The transfer of these two firearms is considered a single transaction; accordingly, the licensee may add the second firearm to the Form 4473, and transfer that firearm without conducting another NICS check.

*Example 3.* A purchaser completes a Form 4473 on February 15, 1999. The licensee receives a unique identification number from NICS on that date, Section B of the Form 4473 is completed by the licensee, and the firearm is transferred. On February 20, 1999, the purchaser returns to the licensee's premises and wishes to purchase a second firearm. The purchase of the second firearm is a separate transaction; thus, a new NICS check must be initiated by the licensee.

(d) *Exceptions to NICS check.* The provisions of paragraph (a) of this section shall not apply if—

(1) The transferee has presented to the licensee a permit or license that—

(i) Allows the transferee to possess, acquire, or carry a firearm;

(ii) Was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(iii) The law of the State provides that such a permit or license is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by the transferee would be in violation of Federal, State, or local law: *Provided*, That on and after November 30, 1998, the information available to such official includes the NICS;

(2) The firearm is subject to the provisions of the National Firearms Act and has been approved for transfer under 27 CFR Part 179; or

(3) On application of the licensee, in accordance with the provisions of § 178.150, the Director has certified that compliance with paragraph (a)(1) of this section is impracticable.

(e) The document referred to in paragraph (d)(1) of this section (or a copy thereof) shall be retained or the required information from the document shall be recorded on the firearms transaction record in accordance with the provisions of § 178.131.

6. Section 178.124 is amended by revising paragraph (c), by removing

“paragraph (c)(1)(ii)” in paragraphs (d) and (e) and adding in its place “paragraph (c)(3)(iii)”, and by revising the first sentence in paragraph (f) to read as follows:

**§ 178.124 Firearms transaction record.**

\* \* \* \* \*

(c)(1) 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 transferee's name, sex, residence address (including county or similar political subdivision), date and place of birth; height, weight and race of the transferee; whether the transferee is a citizen of the United States; the transferee's State of residence; 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.

(2) In order to facilitate the transfer of a firearm and enable NICS to verify the identity of the person acquiring the firearm, ATF Form 4473 also requests certain optional information. This information includes the transferee's social security number and alien registration number (if applicable). Such information may help avoid the possibility of the transferee being misidentified as a felon or other prohibited person.

(3) The licensee shall identify the firearm to be transferred by listing on the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm. After the transferee has executed the Form 4473, but before transferring the firearm described on the Form 4473, the licensee:

(i) Shall comply with the requirements of § 178.102 and record on the form the date on which the licensee contacted the NICS, as well as any response provided by the system, including any identification number provided by the system;

(ii) Shall verify the identity of the transferee by examining the identification document (as defined in § 178.11) presented, and shall note on

the Form 4473 the type of identification used;

(iii) 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

(iv) Shall sign and date the form if the licensee does not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm.

\* \* \* \* \*

(f) Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, or licensed dealer by a transferee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction, who is not subject to the provisions of § 178.102(a), and who is a resident of the State in which the licensee's business premises are located.

\* \* \*

\* \* \* \* \*

7. Section 178.124a is amended by removing the period at the end of the introductory text of paragraph (e) and adding in its place a colon.

8. Section 178.125(e) is amended by revising the text following the eighth sentence to read as follows:

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

\* \* \* \* \*

(e) *Firearms receipt and disposition by dealers.* \* \* \* The record shall show the date of the sale or other disposition of each firearm, the name and address of the person to whom the firearm is transferred, or the name and license number of the person to whom transferred if such person is a licensee, or the firearms transaction record, Form 4473, serial number if the licensed dealer transferring the firearm serially numbers the Forms 4473 and files them numerically, and the identification number (if any) provided by the NICS. The format required for the record of receipt and disposition of firearms is as follows:

FIREARMS 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	Address or license No. if licensee, or Form 4473 Serial No. if forms 4473 filed numerically	Identification No. provided by NICS (if any)

\* \* \* \* \*

9. Section 178.129 is amended by revising paragraph (b), by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), by adding new paragraph (c), and by revising the parenthetical text at the end of the section to read as follows:

**§ 178.129 Record retention.**

\* \* \* \* \*

(b) *Firearms transaction record.* Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition. Where a licensee has received a transaction number from NICS for a proposed firearms transaction, but the sale, delivery, or transfer of the firearm is not made, the licensee shall record the transaction number on the Form 4473, and retain the Form 4473 for a period of not less than 5 years after the date of the NICS inquiry. Forms 4473 shall be retained in the licensee's records as provided in § 178.124(b): *Provided*, That Forms 4473 with respect to which a sale, delivery or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

(c) *Statement of intent to obtain a handgun, reports of multiple sales or other disposition of pistols and revolvers, and reports of theft or loss of firearms.* Licensees shall retain each Form 5300.35 (Statement of Intent to Obtain a Handgun(s)) for a period of not less than 5 years after notice of the intent to obtain the handgun was forwarded to the chief law enforcement officer, as defined in § 178.150(c). Licensees shall retain each copy of Form 3310.4 (Report of Multiple Sale or Other Disposition of Pistols and Revolvers) for a period of not less than 5 years after the date of sale or other disposition. Licensees shall retain each copy of Form 3310.11 (Federal Firearms Licensee Theft/Loss Report) for a period of not less than 5 years after the date the theft or loss was reported to ATF.

\* \* \* \* \*

(Paragraph (c) approved by the Office of Management and Budget under control numbers 1512-0520, 1512-0006, and 1512-0524; Paragraph (f) approved by the Office of Management and Budget under control number 1512-0526; all other recordkeeping approved by the Office of Management and Budget under control number 1512-0129)

**§ 178.130 [Removed]**

10. Section 178.130 is removed.

11. Section 178.131 is revised to read as follows:

**§ 178.131 Firearms transactions not subject to a NICS check.**

(a)(1) A licensed importer, licensed manufacturer, or licensed dealer whose sale, delivery, or transfer of a firearm is made pursuant to the alternative provisions of § 178.102(d) and is not subject to the NICS check prescribed by § 178.102(a) shall maintain the records required by paragraph (a) of this section.

(2) If the transfer is pursuant to a permit or license in accordance with § 178.102(d)(1), the licensee shall either retain a copy of the purchaser's permit or license and attach it to the firearms transaction record, Form 4473, or record on the firearms transaction record, Form 4473, any identifying number, the date of issuance, and the expiration date (if provided) from the permit or license.

(3) If the transfer is pursuant to a certification by ATF in accordance with §§ 178.102(d)(3) and 178.150, the licensee shall maintain the certification as part of the records required to be kept under this subpart and for the period prescribed for the retention of Form 5300.35 in § 178.129(c).

(b) The requirements of this section shall be in addition to any other recordkeeping requirements contained in this part.

12. Section 178.150 is revised to read as follows:

**§ 178.150 Alternative to NICS in certain geographical locations.**

(a) The provisions of § 178.102(d)(3) shall be applicable when the Director has certified that compliance with the provisions of § 178.102(a)(1) is impracticable because:

(1) The ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(2) The business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(3) There is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(b) A licensee who desires to obtain a certification under this section shall submit a written request to the Director. Each request shall be executed under the penalties of perjury and contain information sufficient for the Director to make such certification. Such information shall include statistical data, official reports, or other statements of government agencies pertaining to the ratio of law enforcement officers to the number of square miles of land area of a State and statements of government agencies and private utility companies regarding the absence of telecommunications facilities in the geographical area in which the licensee's business premises are located.

(c) For purposes of this section and § 178.129(c), the "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

**PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS**

13. The authority citation for 27 CFR Part 179 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

14. Section 179.86 is amended by adding a sentence at the end of the section to read as follows:

**§ 179.86 Action on application.**

\* \* \* In addition to any other records checks that may be conducted to determine whether the transfer, receipt, or possession of a firearm would place the transferee in violation of law, the Director shall contact the National

Instant Criminal Background Check System.

Signed: December 31, 1997.

**John W. Magaw,**  
*Director.*

Approved: January 16, 1998.

**John P. Simpson,**

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

[FR Doc. 98-4215 Filed 2-18-98; 8:45 am]

BILLING CODE 4810-31-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 86

[FRL-5967-8]

#### Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-board Diagnostic Regulations for Light-Duty Vehicles and Light-Duty Trucks; Notice of Document Availability

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; document availability.

**SUMMARY:** On May 28, 1997, the U.S. Environmental Protection Agency (EPA or Agency) published a Notice of Proposed Rulemaking (see 62 FR 28932) proposing changes to the federal on-board diagnostics program. One of the proposed changes to the federal OBD program was to indefinitely allow manufacturers to comply with EPA's regulations by demonstrating compliance with the exception of the CARB OBDII anti-tampering provisions and certain evaporative emission monitoring requirements. In that NPRM, the Agency also proposed to update the version of the California OBDII regulations which with manufacturers must comply to a more recently revised version. The NPRM noted that the current version of CARB's regulations were contained in Mail-Out #96-34. However, CARB Mail-Out #96-34 was intended primarily for public comment purposes. In the May 28, 1997 NPRM, the Agency went on to state that, after CARB finalized their regulatory revisions being developed via Mail-Out #96-34, the Agency would, in its final rule, allow compliance with that revised final version provided that relevant portions of that version were acceptable for federal OBD compliance demonstration. The Agency received comments during the public comment period following publication of the

NPRM that this approach of incorporating CARB OBDII regulations would not allow EPA enough time to analyze the final revised version of the CARB OBDII changes for appropriateness and applicability to the federal OBD program. The Agency is in the process of developing the final rulemaking. CARB recently finalized its OBDII changes in CARB Mail-Out #97-24. The Agency has analyzed CARB Mail-Out #97-24 and has determined that it is appropriate for federal OBD compliance and its use for federal OBD presents no regulatory process concerns. This analysis, as well as CARB Mail-Out #97-24 is available in EPA Air Docket A-96-32 (see ADDRESSES).

**DATES:** The Docket will remain open until March 23, 1998 for any parties wishing to submit comment on CARB Mail-Out #97-24.

**ADDRESSES:** Materials relevant to this rulemaking are contained in Docket No. A-96-32. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8:00 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260-7548 and the facsimile number is (202) 260-4400. A reasonable fee may be charged by EPA for copying docket material.

Comments must be submitted to Holly Pugliese, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, or Internet e-mail at "pugliese.holly@epamail.epa.gov."

**FOR FURTHER INFORMATION CONTACT:** Holly Pugliese, Telephone 313-668-4288.

Dated: February 9, 1998.

**Richard D. Wilson,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 98-4010 Filed 2-18-98; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 444

[FRL-5968-5]

RIN 2040-AD03

#### Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Industrial Waste Combustor Subcategory of the Waste Combustors Point Source Category; Correction, Announcement of Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Correction, Announcement of Meeting.

**SUMMARY:** In proposed rule 63 FR 6391, in the **Federal Register** issue of February 6, 1998, make the following correction for the date of the workshop and public hearing. EPA will conduct a workshop and public hearing on the pretreatment standards of the rule on April 1, 1998, from 9:00 a.m. to 10:30 a.m.

The Office of Science and Technology within EPA's Office of Water is announcing the workshop and public hearing to elicit comments on the proposed pretreatment standards for the Industrial Waste Combustor Subcategory of the Waste Combustors Point Source Category (63 FR 6391, February 6, 1998). The meeting will be held in Washington, D.C. on April 1, 1998 at the EPA Headquarters Auditorium. Persons wishing to present formal comments at the public hearing should have a written copy for submittal. All testimony presented or submitted in writing to the designated EPA representative at the public hearing will be considered formal comments on the proposal. In addition, written comments regarding the Industrial Waste Combustors proposal will be accepted until May 7, 1998. Both formal comments from the public hearing and written comments received by EPA will be addressed in the Agency's response to comments and will be part of the public docket for the final rule.

**DATES:** EPA will conduct a workshop and public hearing for the Industrial Waste Combustors Subcategory of the Waste Combustors Point Source Category on April 1, 1998. The Industrial Waste Combustors meeting will be held from 9:00 a.m. to 10:30 a.m.

**ADDRESSES:** The Industrial Waste Combustors meeting will be held in the EPA Headquarters Auditorium, Waterside Mall, 401 M St. SW, Washington, D.C.