

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

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(c) * * *

(5) * * *

(xiii) Five percent of all unsecured receivables includable under paragraph (c)(2)(ii)(D) of this section used by the applicant or registrant in computing "net capital" and which are not due from:

(A) A registered futures commission merchant;

(B) A broker or dealer that is registered as such with the Securities and Exchange Commission; or

(C) A foreign broker that has been granted comparability relief pursuant to § 30.10 of this chapter, *Provided, however*, that the amount of the unsecured receivable not subject to the five percent capital charge is no greater than 150 percent of the current amount required to maintain futures and option positions in accounts with the foreign broker, or 100 percent of such greater amount required to maintain futures and option positions in the accounts at any time during the previous six-month period, and *Provided that*, in the case of customer funds, such account is treated in accordance with the special requirements of the applicable Commission order issued under § 30.10 of this chapter.

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Issued in Washington D.C. on August 23, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[Notice No. 902]

RIN 1512-AC08

Commerce in Firearms and Ammunition—Annual Inventory of Firearms (99R-502P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to require Federally licensed importers, manufacturers, and dealers of firearms

to take at least one physical inventory each year. The proposed regulations also specify the circumstances under which these licensees must conduct a special physical inventory. In addition, the proposed regulations clarify that when a firearm is stolen or lost in transit between licensees, for reporting purposes it is considered stolen or lost from the transferor's/sender's inventory.

DATES: Written comments must be received on or before November 27, 2000.

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. 902*. Written comments must be signed. Submit e-mail comments to: nprm@atfhq.atf.treas.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½" × 11" in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Public Participation section of this notice for alternative means of providing written comments.

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

Section 923(g)(6) of the Gun Control Act of 1968 (GCA) requires licensed manufacturers, licensed importers, licensed dealers, and licensed collectors to report any theft or loss of firearms from the licensee's inventory or collection to ATF and the appropriate local authorities within 48 hours after the theft or loss is discovered.

The regulation that implements section 923(g)(6) is contained in 27 CFR 178.39a. This section provides that each Federal firearms licensee (FFL) must report the theft or loss of a firearm from the licensee's inventory (including any firearm which has been transferred from the licensee's inventory to a personal collection and held as a personal firearm for at least 1 year), or from the collection of a licensed collector within 48 hours after the theft or loss is discovered. Licensees must report such thefts or losses by telephoning 1-800-800-3855 (nationwide toll free number) and by preparing ATF Form 3310.11, Federal Firearms Licensee Theft/Loss Report, in accordance with the

instructions on the form. The original of the report must be forwarded to the office specified on the form, and Copy 1 must be retained by the licensee as part of the licensee's permanent records. The licensee must also report the theft or loss of a firearm to the appropriate local authorities.

Section 178.129(c) requires licensees to retain each copy of Form 3310.11 for a period of not less than 5 years after the date the theft or loss was reported to ATF.

Proposed Regulations

27 CFR 178.130

In 1998 and 1999, licensees filed theft/loss reports on over 5,000 incidents, involving over 27,000 lost or stolen firearms. Inventory discrepancies, recordkeeping errors, and employee theft (problems which often only become apparent when a physical inventory is conducted) accounted for almost 40 percent of the reported incidents and over 11,000 missing firearms.

Accordingly, ATF is proposing that all Federally licensed importers, manufacturers, and dealers in firearms be required to conduct at least one annual physical inventory of their firearms inventory and reconcile that inventory with the records of receipt and disposition required under part 178. In addition, ATF is proposing that these licensees be required to conduct special firearms inventories under the following conditions: at the time of commencing business (already a requirement for licensed dealers under 178.125(e)), at the time of changing the location of their business premises, at the time of discontinuing business, and at any other time the Director of Industry Operations may require in writing. These special inventory requirements are necessary to account for changes in business operations that often affect inventories.

Any theft or loss of a firearm disclosed during the annual inventory or during a special inventory must be reported within 48 hours after its discovery in accordance with the statutory requirements of 18 U.S.C. 923(g)(6). Without the inventory requirements, licensees could not effectively fulfill these reporting requirements.

The annual inventory requirement is considered to be an ordinary and customary business practice.

27 CFR 178.39a

Current regulations do not specify if firearms are considered the inventory of the sending or receiving Federal firearms licensee while in transit

between licensees on a common carrier. Therefore, current regulations do not specify whether the sending or receiving licensee is responsible for reporting the theft or loss of a firearm while it is in transit between licensees on a common carrier. The lack of clarity over which FFL is responsible for reporting the theft or loss may result in neither party reporting the theft or loss. In Fiscal Year 1999, there were 1,271 crime guns traces in which the FFL claimed that it never received the firearm shipped to it and the firearm had not been reported to ATF as lost or stolen. Thus, a significant number of firearms lost or stolen in transit are not being reported to ATF and the appropriate local authorities. In addition, common carriers are not required under Federal law to report the theft or loss of firearms shipped in commerce. These omissions prevent ATF and local law enforcement from investigating the specific theft or loss which is not reported and hinders ATF's tracing capabilities.

To eliminate this problem, ATF proposes that a firearm stolen or lost in transit between licensees be considered stolen or lost from the transferor's/sender's inventory. Accordingly, the transferor/sender of the missing firearm must report the theft or loss of the firearm within 48 hours after the theft or loss is discovered by the transferor/sender to ATF and to the appropriate local authorities.

In addition, in order to enable the transferor/sender of the firearm to have the knowledge necessary to fulfill these reporting responsibilities, the transferor/sender must have, or establish, commercial business practices which let him or her learn whether the transferee/buyer of the firearm ultimately received the firearm. The transferor/sender can fulfill this verification requirement by contacting the transferee/buyer by telephone, facsimile, or e-mail and asking whether he or she had received the firearm. The transferor/sender also could, by contract, require the transferee/buyer to always confirm receipt of firearms.

We determined it is more logical to put the reporting burden on the transferor/sender, rather than the transferee/buyer, because the transferor/sender is more likely to know the circumstances of when and how the firearm was shipped. Accordingly, it will be less burdensome for the transferor/sender to assure that he/she has the knowledge necessary to fulfill the reporting requirement than it would be for the transferee/buyer.

If a firearm is lost or stolen in transit, the notation in the acquisition and disposition book of the transferor/

sender that the firearm was disposed of to a particular transferee/buyer is inaccurate. Therefore, a transferor/sender must verify that the transferee/buyer received the shipped firearm in order to fulfill his/her statutory responsibility to maintain accurate records. 18 U.S.C. 922(m), 923(g)(1)(A), and 923(g)(2).

ATF recognizes that the proposed regulation is not consistent with the Uniform Commercial Code's (UCC's) treatment of the transfer of title for risk of loss purposes. In the absence of State law governing the transfer of a firearm between the seller and the buyer, the UCC allows the seller and buyer to establish when the title of the firearm would pass from the seller to the buyer. However, ATF determined that adopting the UCC rule in the context of reporting firearms lost or stolen in transit from a common carrier would be problematic, both for FFLs to apply and for ATF to enforce. Rather than being able to follow the flat rule that the transferor/sender FFL always is responsible for reporting lost or stolen firearms, an FFL would have to look at each contract it had with another FFL to determine whether he/she had the reporting responsibility in a particular circumstance. The transferor/sending FFL may have the reporting responsibility under some contracts, and not have it under other contracts. Because of shifting responsibilities, it would be more likely that some lost or stolen firearms would slip through the cracks and go unreported.

Furthermore, it would be more difficult for ATF to ensure the reporting requirements were being fulfilled under the UCC rule. ATF would have to ask FFLs about their contracts with other FFLs. Therefore, ATF opted to propose the clear-cut rule of imposing the reporting requirements on the sending FFL, even though this requires the sending FFL to take additional steps to be informed of the theft or loss.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the

agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. We hereby certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities because 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.

C. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget 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 Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, at the address previously specified. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, 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 27 CFR sections 178.39a and 178.130. This information is required to fulfill the statutory requirements of reporting the theft or loss of firearms to ATF. The collections of information are mandatory. The likely respondents are businesses. Since the annual inventory requirement under section 178.130 is considered to be an ordinary and

customary business practice, we are stating that there is no additional reporting and/or recordkeeping burden. The following burden hours are for the additional reporting requirements of section 178.39a.

Estimated total annual reporting and/or recordkeeping burden: 15,483 hours (estimated total hours for follow-up verification requirements of section 178.39a).

Estimated average burden hours per respondent and/or recordkeeper: .1 hours (estimated one-tenth of an hour per follow-up verification).

Estimated number of respondents and/or recordkeepers: 100,293 (total population of Federal firearms licensees excluding ammunition manufacturers).

Estimated annual frequency of responses: 929,000 (estimated number of firearm shipments per year).

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

We are requesting comments on the proposed regulations from all interested persons. In addition, we are soliciting comment on whether the inventory requirements should be applied to licensed collectors. We are also specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand.

You may submit comments by facsimile transmission to (202) 927-8602. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be 8½" × 11" in size;
- Contain a legible written signature;

and

- Be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

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.

We 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.

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 authors of this document are James P. Ficaretta, Regulations Division, and William Bowers, Firearms Trafficking Branch, 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, Exports, Imports, Incorporation by reference, Military personnel, 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 178.39a is amended by adding three sentences after the first sentence to read as follows:

§ 178.39a Reporting theft or loss of firearms.

* * * When a firearm is stolen or lost in transit between licensees, it is considered stolen or lost from the

transferor's/sender's inventory. Therefore, the transferor/sender of the missing firearm(s) must report the theft or loss of the firearm(s) within 48 hours after the theft or loss is discovered. The transferor/sender must have, or establish, commercial business practices which enable him/her to determine whether the transferee/buyer of the firearm(s) received the firearm(s). * * *

Par. 3. Section 178.130 is added to subpart H to read as follows:

§ 178.130 Inventory.

(a)(1) Each licensed manufacturer, licensed importer, and licensed dealer must take at least one true and accurate physical inventory each year. The inventory must include all firearms on hand required to be accounted for in the records kept under this part. Furthermore, the licensee must conduct a special physical inventory:

- (i) At the time of commencing business, which is the effective date of the license issued upon original qualification under this part;
- (ii) At the time of changing the location of the business premises;
- (iii) At the time of discontinuing business; and

(iv) At any other time the Director of Industry Operations may in writing require.

(2) The special physical inventories required by paragraphs (a)(1)(i) through (iv) of this section count toward the annual physical inventory requirement.

(b) Every physical inventory must be reconciled with the record of receipt and disposition required under this part. Any theft or loss of a firearm disclosed during inventory must be reported within 48 hours after its discovery in accordance with the requirements of § 178.39a.

(c) Every licensed manufacturer, licensed importer, and licensed dealer must maintain a record of any inventory required by this section for a period of not less than 5 years after the inventory was conducted. The record must include the following firearms information—

- (1) Name of manufacturer and/or importer;
- (2) Model;
- (3) Serial number;
- (4) Type; and
- (5) Caliber or gauge.

Dated: June 20, 2000.

Bradley A. Buckles,
Director.

Approved: August 3, 2000.

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

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