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Crime - Gun Warnings



crime-gun warning

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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

August 15, 1997

The Honorable William Jefferson Clinton
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

On June 11, 1997, you directed the Department of the Treasury to publish proposed regulations requiring that Federal firearms licensees post signs and issue written notices to handgun purchasers warning of the requirements of the Youth Handgun Safety Act. The Department of the Treasury is completing its review of a notice of proposed rulemaking on this issue. The proposed rule would require the posting of signs and issuance of notices that would state as follows:

(1) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18;

(2) A violation of the prohibition against transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison;

(3) Handguns are a leading contributor to juvenile violence and fatalities; and

(4) Safely storing and locking handguns away from children can help ensure compliance with Federal law.

The Department anticipates that the notice of proposed rulemaking will be published in the Federal Register by August 22, 1997. The notice will provide a 90-day comment period. After consideration of the comments received in response to this notice, a final rule will be issued.

Sincerely,

Robert E. Rubin

local officers; statute defined CLEO as chief of police, sheriff, or equivalent officer, structure of section indicated flexible nature of CLEO duties, and deference to interpretation of agency charged with implementing statute was warranted because Congress had not spoken to that particular issue. *Frank v. U.S.*, C.A.2 (Vt.) 1996, 78 F.3d 815, petition for certiorari filed.

State police are not "equivalent officer" within meaning of provision of Brady Act defining chief law enforcement officer (CLEO) as chief of police, sheriff, or equivalent officer upon whom obligations are imposed in connection with firearms transactions. *Frank v. U.S.*, D.Vt.1994, 860 F.Supp. 1030, affirmed in part, reversed in part, 78 F.3d 815, petition for certiorari filed.

73. Venue

Venue of prosecution for possession of unlawful machine gun of defendant who purchased machine gun conversion kits from local dealer was proper in district where purchase occurred, notwithstanding fact that kits were manufactured and initially sold in another district. *U.S. v. Hunter*, E.D.Mich.1994, 863 F.Supp. 462.

74. Elements

Actual knowledge on defendant's part that serial number has been obliterated at time of his

§ 922. Licensing

(a) No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Secretary. The application shall be in such form and contain only that information necessary to determine eligibility for licensing as the Secretary shall by regulation prescribe and shall include a photograph and fingerprints of the applicant. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business, as follows:

(1) If the applicant is a manufacturer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1,000 per year;

(B) of firearms other than destructive devices, a fee of \$50 per year; or

(C) of ammunition for firearms, other than ammunition for destructive devices or armor piercing ammunition, a fee of \$10 per year.

(2) If the applicant is an importer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1,000 per year; or

(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing ammunition, a fee of \$50 per year.

(3) If the applicant is a dealer—

(A) in destructive devices or ammunition for destructive devices, a fee of \$1,000 per year; or

(B) who is not a dealer in destructive devices, a fee of \$200 for 3 years, except that the fee for renewal of a valid license shall be \$90 for 3 years.

[[C] Repealed, Pub.L. 103-159, Title III, § 303(4), Nov. 30, 1993, 107 Stat. 1546.]

(b) Any person desiring to be licensed as a collector shall file an application for such license with the Secretary. The application shall be in such form and contain only that information necessary to determine eligibility as the Secretary shall by regulation prescribe. The fee for such license shall be \$10 per year. Any license granted under this subsection shall only apply to transactions in curios and relics.

possession is element of crime of carrying firearm that has been in interstate commerce with obliterated serial number. *U.S. v. Abernathy*, C.A.1 (R.L.) 1996, 83 F.3d 17.

To prove charge that defendant was felon in possession of firearm, government must show that defendant was previously convicted of offense requiring imprisonment exceeding one year and knowingly possessed firearm in or affecting interstate commerce. *U.S. v. Lewis*, C.A.1 (Mass.) 1994, 40 F.3d 1825.

75. Willfulness

To prove "willfulness" as an element of delivery of firearm to a carrier for transportation in interstate commerce without notice to carrier, government need not establish that a defendant had specific knowledge of statute he is accused of violating, nor that he had specific intent to violate the statute; rather, element of willfulness is meant to be read broadly to require only that government prove defendant's conduct was knowing and purposeful and that defendant intended to commit an act which the law forbids. *U.S. v. Ali*, C.A.2 (N.Y.) 1995, 68 F.3d 1468, amended on denial of rehearing, on rehearing 88 F.3d 276.

(c) Upon the filing of a proper application and payment of the prescribed fee, the Secretary shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the license. Nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and disposing of a personal collection of firearms, subject only to such restrictions as apply in this chapter to dispositions by a person other than a licensed manufacturer, importer, or dealer. If any firearm is so disposed of by a licensee within one year after its transfer from his business inventory into such licensee's personal collection or if such disposition or any other acquisition is made for the purpose of willfully evading the restrictions placed upon licensees by this chapter, then such firearm shall be deemed part of such licensee's business inventory, except that any licensed manufacturer, importer, or dealer who has maintained a firearm as part of a personal collection for one year and who sells or otherwise disposes of such firearm shall record the description of the firearm in a bound volume, containing the name and place of residence and date of birth of the transferee if the transferee is an individual, or the identity and principal and local places of business of the transferee if the transferee is a corporation or other business entity. *Provided*, That no other recordkeeping shall be required.

(d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

(A) the applicant is twenty-one years of age or over;

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (n) of this chapter;

[See main volume for text of (C)]

(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application;

(E) the applicant has in a State (i) premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time, or (ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time; and

(F) the applicant certifies that—

(i) the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premise is located;

(ii) (I) within 80 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business; and

(II) the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met; and

(iii) that the applicant has sent or delivered a form to be prescribed by the Secretary, to the chief law enforcement officer of the locality in which the premises are located, which indicates that the applicant intends to apply for a Federal firearms license.

(2) The Secretary must approve or deny an application for a license within the 60-day period beginning on the date it is received. If the Secretary fails to act within such period, the applicant may file an action under section 1361 of title 28 to compel the Secretary to act. If the Secretary approves an applicant's application, such applicant shall be issued a license upon the payment of the prescribed fee.

(e) The Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has willfully violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter. The Secretary may, after notice and opportunity for hearing, revoke the license of a

dealer who willfully transfers armor piercing ammunition. The Secretary's action under this subsection may be reviewed only as provided in subsection (f) of this section.

(f)(1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Secretary stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the revocation.

[See main volume for text of (2)]

(3) If after a hearing held under paragraph (2) the Secretary decides not to reverse his decision to deny an application or revoke a license, the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a de novo judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding whether or not such evidence was considered at the hearing held under paragraph (2). If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court.

(4) If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of rules or regulations prescribed under this chapter, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government before trial upon such charges, the Secretary shall be absolutely barred from denying or revoking any license granted under this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges. No proceedings for the revocation of a license shall be instituted by the Secretary more than one year after the filing of the indictment or information.

(g)(1)(A) Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Secretary may by regulations prescribe. Such importers, manufacturers, and dealers shall not be required to submit to the Secretary reports and information with respect to such records and the contents thereof, except as expressly required by this section. The Secretary, when he has reasonable cause to believe a violation of this chapter has occurred and that evidence thereof may be found on such premises, may, upon demonstrating such cause before a Federal magistrate and securing from such magistrate a warrant authorizing entry, enter during business hours the premises (including places of storage) of any licensed firearms importer, licensed manufacturer, licensed dealer, licensed collector, or any licensed importer or manufacturer of ammunition, for the purpose of inspecting or examining—

(i) any records or documents required to be kept by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector under this chapter or rules or regulations under this chapter; and

(ii) any firearms or ammunition kept or stored by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector, at such premises.

(B) The Secretary may inspect or examine the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer without such reasonable cause or warrant—

(i) in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee;

(ii) for ensuring compliance with the record keeping requirements of this chapter—

(I) not more than once during any 12-month period; or

(II) at any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee; or

(iii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

(C) The Secretary may inspect the inventory and records of a licensed collector without such reasonable cause or warrant—

(i) for ensuring compliance with the record keeping requirements of this chapter not more than once during any twelve-month period; or

(ii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

(D) At the election of a licensed collector, the annual inspection of records and inventory permitted under this paragraph shall be performed at the office of the Secretary designated for such inspections which is located in closest proximity to the premises where the inventory and records of such licensed collector are maintained. The inspection and examination authorized by this paragraph shall not be construed as authorizing the Secretary to seize any records or other documents other than those records or documents constituting material evidence of a violation of law. If the Secretary seizes such records or documents, copies shall be provided to the licensee within a reasonable time. The Secretary may make available to any Federal, State, or local law enforcement agency any information which he may obtain by reason of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition, and he may provide information to the extent such information may be contained in the records required to be maintained by this chapter, when so requested by any Federal, State, or local law enforcement agency.

(2) Each licensed collector shall maintain in a bound volume the nature of which the Secretary may by regulations prescribe, records of the receipt, sale, or other disposition of firearms. Such records shall include the name and address of any person to whom the collector sells or otherwise disposes of a firearm. Such collector shall not be required to submit to the Secretary reports and information with respect to such records and the contents thereof, except as expressly required by this section.

(3)(A) Each licensee shall prepare a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totalling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Secretary and forwarded to the office specified thereon and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place, not later than the close of business on the day that the multiple sale or other disposition occurs.

(B) Except in the case of forms and contents thereof regarding a purchaser who is prohibited by subsection (g) or (n) of section 922 of this title from receipt of a firearm, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall not disclose any such form or the contents thereof to any person or entity, and shall destroy each such form and any record of the contents thereof no more than 20 days from the date such form is received. No later than the date that is 6 months after the effective date of this subparagraph, and at the end of each 6-month period thereafter, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall certify to the Attorney General of the United States that no disclosure contrary to this subparagraph has been made and that all forms and any record of the contents thereof have been destroyed as provided in this subparagraph.

(4) Where a firearms or ammunition business is discontinued and succeeded by a new licensee, the records required to be kept by this chapter shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, such records shall be delivered within thirty days after the business discontinuance to the Secretary. However, where State law or local ordinance requires the delivery of records to other responsible authority, the Secretary may arrange for the delivery of such records to such other responsible authority.

(5)(A) Each licensee shall, when required by letter issued by the Secretary, and until notified to the contrary in writing by the Secretary, submit on a form specified by the Secretary, for periods and at the times specified in such letter, all record information

required to be kept by this chapter or such lesser record information as the Secretary in such letter may specify.

(B) The Secretary may authorize such record information to be submitted in a manner other than that prescribed in subparagraph (A) of this paragraph when it is shown by a licensee that an alternate method of reporting is reasonably necessary and will not unduly hinder the effective administration of this chapter. A licensee may use an alternate method of reporting if the licensee describes the proposed alternate method of reporting and the need therefor in a letter application submitted to the Secretary, and the Secretary approves such alternate method of reporting.

(6) Each licensee shall report the theft or loss of a firearm from the licensee's inventory or collection, within 48 hours after the theft or loss is discovered, to the Secretary and to the appropriate local authorities.

(7) Each licensee shall respond immediately to, and in no event later than 24 hours after the receipt of, a request by the Secretary for information contained in the records required to be kept by this chapter as may be required for determining the disposition of 1 or more firearms in the course of a bona fide criminal investigation. The requested information shall be provided orally or in writing, as the Secretary may require. The Secretary shall implement a system whereby the licensee can positively identify and establish that an individual requesting information via telephone is employed by and authorized by the agency to request such information.

[See main volume for text of (h)]

(I) Licensed importers and licensed manufacturers shall identify, by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Secretary shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer. The serial number of any semiautomatic assault weapon manufactured after the date of the enactment of this sentence shall clearly show the date on which the weapon was manufactured. A large capacity ammunition feeding device manufactured after the date of the enactment of this sentence shall be identified by a serial number that clearly shows that the device was manufactured or imported after the effective date of this subsection, and such other identification as the Secretary may by regulation prescribe.

(J) A licensed importer, licensed manufacturer, or licensed dealer may, under rules or regulations prescribed by the Secretary, conduct business temporarily at a location other than the location specified on the license if such temporary location is the location for a gun show or event sponsored by any national, State, or local organization, or any affiliate of any such organization devoted to the collection, competitive use, or other sporting use of firearms in the community, and such location is in the State which is specified on the license. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale, or other disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license. Nothing in this subsection shall authorize any licensee to conduct business in or from any motorized or towed vehicle. Notwithstanding the provisions of subsection (a) of this section, a separate fee shall not be required of a licensee with respect to business conducted under this subsection. Any inspection or examination of inventory or records under this chapter by the Secretary at such temporary location shall be limited to inventory consisting of, or records relating to, firearms held or disposed at such temporary location. Nothing in this subsection shall be construed to authorize the Secretary to inspect or examine the inventory or records of a licensed importer, licensed manufacturer, or licensed dealer at any location other than the location specified on the license. Nothing in this subsection shall be construed to diminish in any manner any right to display, sell, or otherwise dispose of firearms or ammunition, which is in effect before the date of the enactment of the Firearms Owners' Protection Act, including the right of a licensee to conduct "curios or relics" firearms transfers and business away from their business premises with another licensee without regard as to whether the location of where the business is conducted is located in the State specified on the license of either licensee.

(K) Licensed importers and licensed manufacturers shall mark all armor piercing projectiles and packages containing such projectiles for distribution in the manner prescribed by the Secretary by regulation. The Secretary shall furnish information to each dealer licensed under this chapter defining which projectiles are considered armor piercing ammunition as defined in section 921(a)(17)(B).

(G) The Secretary of the Treasury shall notify the chief law enforcement officer in the appropriate State and local jurisdictions of the names and addresses of all persons in the State to whom a firearms license is issued.

(As amended Pub.L. 97-377, Title I, § 165(b), Dec. 21, 1982, 96 Stat. 1923; Pub.L. 99-308, § 103, May 19, 1986, 100 Stat. 453; Pub.L. 99-360, § 1(c), July 8, 1986, 100 Stat. 766; Pub.L. 99-408, §§ 3-7, Aug. 28, 1986, 100 Stat. 821; Pub.L. 100-690, Title VII, § 706(d), Nov. 18, 1988, 102 Stat. 4404; Pub.L. 101-647, Title XXII, § 2203(a), Title XXXV, § 3525, Nov. 29, 1990, 104 Stat. 4857, 4924; Pub.L. 103-159, Title II, § 201, Title III, § 303, Nov. 30, 1993, 107 Stat. 1544, 1545; Pub.L. 103-322, Title XI, §§ 110102(d), 110103(d), 110301(a), 110302-110307, Title XXXIII, § 330011(i), Sept. 13, 1994, 108 Stat. 1993, 1999, 2012, 2013, 2014, 2145; Pub.L. 104-208, Div. A, Title I, § 101(f) [Title I, § 118], Sept. 30, 1996, 110 Stat. 8009; Pub.L. 104-294, Title VI, § 603(j)(1), (k), (l), Oct. 11, 1996, 110 Stat. 3504, 3405.)

Amendment of Subsection (I)

Pub.L. 103-322, Title XI, § 110105(e), Sept. 13, 1994, 108 Stat. 2000, provided that the amendments made to this section by sections 110102(d) and 110103(d) of Pub.L. 103-322, which amended subsec. (I) of this section by inserting sentences relating to the serial numbers of semiautomatic assault weapons manufactured after September 13, 1994, and large capacity ammunition feeding devices manufactured after September 13, 1994, are repealed effective as of September 13, 2000.

HISTORICAL AND STATUTORY NOTES

References in Text

The effective date of this subparagraph, referred to in subsec. (g)(3)(B), is the effective date of Pub.L. 103-159, which was approved Nov. 30, 1993.

The date of the enactment of this sentence, referred to in subsec. (I), is the date of enactment of Pub.L. 103-322, which was approved Sept. 13, 1994.

The date of the enactment of the Firearms Owners' Protection Act, referred to in subsec. (J), is the date of enactment of Pub.L. 99-308, which was approved May 19, 1986.

Codification

Directory language of section 165(b) of Pub.L. 97-377 that the words "except 22 caliber rimfire ammunition" be inserted after the words "and ammunition" in section 923(g) of this title was impossible of literal execution since this section has lettered not numbered subsections. Amendment has been executed to subsec. (g) of this section as the probable intent of Congress.

1984 Amendments

Subsec. (a). Pub.L. 103-322, § 110301(a), inserted "and shall include a photograph and fingerprints of the applicant" in the provisions preceding par. (1).

Subsec. (a)(3)(B). Pub.L. 103-322, § 330011(i), corrected a technical error in the directory language of section 3525 of Pub.L. 101-647 which had amended subsec. (a)(3)(B) of this section in 1990. Amendment by Pub.L. 103-322 resulted in no change in text.

Subsec. (d)(1)(F). Pub.L. 103-322, § 110302, added subpar. (F).

Subsec. (d)(2). Pub.L. 103-322, § 110303, substituted "60-day" for "forty-five day".

Subsec. (g)(1)(B)(ii). Pub.L. 103-322, § 110304, designated a portion of existing cl. (ii) as subcl. (i) and added subcl. (ii).

Subsec. (g)(6). Pub.L. 103-322, § 110305, added par. (6).

Subsec. (g)(7). Pub.L. 103-322, § 110306, added par. (7).

Subsec. (I). Pub.L. 103-322, § 110102(d), added the following sentence: "The serial number of any semiautomatic assault weapon manufactured after the date of the enactment of this sentence shall clearly show the date on which the weapon was manufactured."

Pub.L. 103-322, § 110103(d), added the following sentence: "A large capacity ammunition feeding device manufactured after the date of the enactment of this sentence shall be identified by a serial number that clearly shows that the device was manufactured or imported after the effective date of this subsection, and such other identification as the Secretary may by regulation prescribe."

Subsec. (J). Pub.L. 103-322, § 110307, as amended Pub.L. 104-294, § 603(l), added subsec. "(J)", subsequently redesignated as (I).

1993 Amendments

Subsec. (a)(3)(A). Pub.L. 103-159, § 303(1), inserted "or" at the end of subpar. (A).

Subsec. (a)(3)(B). Pub.L. 103-159, § 303(2), (3), substituted "who is not a dealer in destructive devices, a fee of \$200 for 3 years, except that the fee for renewal of a valid license shall be \$90 for 3 years." for "who is a pawnbroker dealing in firearms other than destructive devices, a fee of \$25 per year; or".

Subsec. (a)(3)(C). Pub.L. 103-159, § 303(4), struck out former subpar. (C), which related to a licensing fee of \$10 per year for applicants who were neither dealers in destructive devices nor pawnbrokers.

Subsec. (g)(3)(A). Pub.L. 103-159, § 201(1), (2), as amended Pub.L. 104-294, § 603(j)(1), designated existing provisions as subpar. (A), and, as so designated, added provisions requiring the transmission of a copy of report on multiple sales or other dispositions to the State or local law enforcement agency having jurisdiction over the transactions.

Subsec. (g)(3)(B). Pub.L. 103-159, § 201(3), added subpar. (B).

1990 Amendment

Subsec. (a)(3)(B). Pub.L. 101-647, § 3525, as amended Pub.L. 103-322, § 3300110, inserted a comma following "devices".

Subsec. (d)(1)(B). Pub.L. 101-647, § 2203(a), substituted "(n)" for "(h)".

1988 Amendment

Subsec. (a). Pub.L. 100-690, § 7060(d)(1), struck out the period following "licensing".

Subsec. (f)(3). Pub.L. 100-690, § 7060(d)(2), struck out the period following the period.

1986 Amendments

Subsec. (a). Pub.L. 99-308, § 103(1), in provision preceding par. (1) substituted "the business of importing, manufacturing, or dealing in firearms, or importing of manufacturing ammunition," for "business as a firearms or ammunition importer, manufacturer, or dealer," "application with and" for "application with, and," "from the" for "from, the," and "only that information necessary to determine eligibility for licensing," for "such information".

Subsec. (a)(1)(A). Pub.L. 99-308, § 3, added applicability to armor piercing ammunition.

Subsec. (a)(1)(C). Pub.L. 99-308, § 4, added applicability to armor piercing ammunition.

Subsec. (a)(2). Pub.L. 99-308, § 5, added references to armor piercing ammunition wherever appearing.

Subsec. (a)(3)(B). Pub.L. 99-308, § 103(2), struck out "or ammunition or firearms other than destructive devices," after "destructive devices".

Subsec. (b). Pub.L. 99-308, § 103(3), substituted "only that information necessary to determine eligibility" for "such information".

Subsec. (c). Pub.L. 99-360 inserted provision which required any licensed manufacturer, importer, or dealer who has maintained a firearm as part of a personal collection for one year and sells or otherwise disposes of such firearm to record the description of the firearm in a bound volume, and provided other information to be recorded, and provided that no other recordkeeping be required.

Pub.L. 99-308, § 103(4), inserted provision that nothing in this chapter be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining or disposing of a personal collection of firearms subject to such restrictions as apply to other persons and provision specifying circumstances under which such acquisition or disposition shall be deemed as part of the licensee's business inventory.

Subsec. (e). Pub.L. 99-308, § 6, added provisions relating to dealers willfully transferring armor piercing ammunition. Pub.L. 99-308, § 103(5), inserted "willfully" before "violated".

Subsec. (f)(3). Pub.L. 99-308, § 103(6)(A), inserted "de novo" before "judicial review" and "whether or not such evidence was considered at the hearing held under paragraph (2)," after "to the proceeding".

Subsec. (f)(4). Pub.L. 99-308, § 103(6)(B), added par. (4).

Subsec. (g). Pub.L. 99-308, § 103(7), substituted provisions which directed that each licensed importer, manufacturer, and dealer maintain such records as the Secretary by regulation prescribes, required the Secretary, upon reasonable cause to believe a violation has occurred, to obtain a warrant to inspect or examine records and documents required to be kept or firearms and ammunition stored, prescribed conditions under which the Secretary may inspect and examine without reasonable cause or warrant, provided that the annual inspection; if the election of the licensee, be held at the closest office of the Secretary to where the records and inventory are kept and that if any records or documents are seized, the licensee be provided with copies within a reasonable time, required each licensed collector maintain in a bound volume records of receipts, sales, or other dispositions and that each licensee prepare a report of multiple sales or other disposition to an unlicensed person, directed that if a firearm or ammunition business is discontinued and succeed the records reflect it and be turned over to the new licensee or if absolutely discontinues the records be turned over to the Secretary or other responsible authority, required each licensee, when directed by letter issued by the Secretary, to submit on the specified form for periods and times so specified, all record information required to be kept or such lesser record information as requested, and provided for an alternative method of reporting if approved by the Secretary for provision which required that each licensed importer, manufacturer, dealer, and collector maintain such records, except on 22 caliber rimfire ammunition, as the Secretary by regulation prescribes, directed that these records be available for inspection at reasonable times and reports and information with respect to these records be submitted to the Secretary as the Secretary by regulation prescribes, and permitted the Secretary to enter the premises during regular business hours to inspect and examine records or documents required to be kept and firearms and ammunition stored on such premises.

Subsec. (j). Pub.L. 99-308, § 103(8), substituted provision authorizing a licensed importer, manufacturer, or dealer to conduct business temporarily at a location other than that specified on his license, if such location is the location of a gun show or event sponsored by a national, State, or local organization or affiliate and such location is in the State specified in his license, specifying the records to be kept in relation to such temporary business and the extent of inspection and examine of inventory at such temporary location, and directing that this subsection not effect any right to display, sell, or otherwise disposed of firearms and ammunition before May 19, 1986, for provision that this section not apply to anyone who engages only in hand loading, reloading, or custom loading ammunition for his own firearm and who does not hand load, reload, or custom load ammunition for others.

Subsec. (k). Pub.L. 99-308, § 7, added subsec. (k).

1982 Amendment

Subsec. (g). Pub.L. 97-577, § 165(b), added "except 22 caliber rimfire ammunition" after "and ammunition". See Codification note above.

Effective Date of 1986 Amendments

Section 603(j)(2) of Pub.L. 104-294 provided that: "The amendment made by paragraph (1) [amending section 201(1)] of Pub.L. 103-159, which amended subsec. (g)(3) of this section] shall take effect as if the amendment had been included in the Act referred to in paragraph (1) [Pub.L. 103-159, 107 Stat. 1538, for classification of which to the Code, see Tables] on the date of the enactment of such Act [Nov. 30, 1993]."

Effective Date of 1994 Amendments

Section 3300110 of Pub.L. 103-322 provided in part that the amendment made by such section, amending directory language of section 3525 of Pub.L. 101-647 (which amended this section), was to take effect on the date section 3525 of Pub.L. 101-647 took effect; section 3525 of Pub.L. 101-647 took effect on the date of enactment of Pub.L. 101-647, which was approved Nov. 29, 1990.

Effective Date of 1986 Amendments

Amendment of subsec. (a)(1)(A), (C), (2)(A), and (B), by Pub.L. 99-308 effective on the first day of the first calendar month which begins more than ninety days after Aug. 23, 1986, see

CODE OF FEDERAL REGULATIONS

Bureau of Alcohol, Tobacco and Firearms, commerce in firearms and ammunition—
Licenses, see 27 CFR 178.41 et seq.

NOTES OF DECISIONS

Burden of proof 12a

Rules and regulations 2a
Willfulness 12b

1. Constitutionality

Neither record-keeping provisions of this section nor applicable regulations were too burdensome nor unconstitutionally vague. *Flp. & Feather Sport Shop, Inc. v. U. S. Treasury Dept., Internal Revenue Service, Bureau of Alcohol, Tobacco and Firearms, D.C.Neb.1979, 481 F.Supp. 800.*

2a. Rules and regulations

Statute and regulation requiring firearms dealer to maintain and retain records on licensed premises were not unconstitutionally vague, despite dealer's contention that statute and regulation did not indicate whether dealer with multiple licenses needed to maintain and retain separate records for each licensed location; by requiring records on licensed premises, statute clearly required separate records at each location. *U.S. v. Ninety-Five Firearms, C.A.9 (Cal.) 1994, 23 F.3d 940.*

Regulation defining "gun show or event" for purposes of section of Firearm Owners Protection Act providing that a licensee may conduct business temporarily at a gun show or event

section 9 of Pub.L. 99-408, set out as a note under section 921 of this title.

Amendment of subsec. (e) and (k) by Pub.L. 99-408 effective Aug. 23, 1986, see section 9 of Pub.L. 99-408, set out as a note under section 921 of this title. Amendment by Pub.L. 99-360 effective on the date on which the Firearms Owners' Protection Act, Pub.L. 99-308, becomes effective, see section 2 of Pub.L. 99-360, set out as a note under section 921 of this title.

Amendment by section 103(1) to (5)(A), (7), and (8) of Pub.L. 99-308 effective 180 days after May 19, 1986, see section 110(a) of Pub.L. 99-308, set out as a note under section 921 of this title.

Amendment by section 103(6)(B) of Pub.L. 99-308, enacting subsec. (f)(4), applicable to any action, petition, or appellate proceeding pending on May 19, 1986, see section 110(b) of Pub.L. 99-308, set out as a note under section 921 of this title.

Legislative History

For legislative history and purpose of Pub.L. 99-308, see 1986 U.S. Code Cong. and Adm. News, p. 1827. See also, Pub.L. 99-408, 1986 U.S. Code Cong. and Adm. News, p. 1992; Pub.L. 101-647, 1990 U.S. Code Cong. and Adm. News, p. 6472; Pub.L. 103-159, 1993 U.S. Code Cong. and Adm. News, p. 1984; Pub.L. 103-322, 1994 U.S. Code Cong. and Adm. News, p. 1801; Pub.L. 104-294, 1996 U.S. Code Cong. and Adm. News, p. —

License proceedings, see 27 CFR 178.71 et seq.

sponsored by any organization devoted to the collection, competitive use, or other sporting use of firearms in the community was reasonable and consistent with the Act. *National Rifle Ass'n v. Brady, C.A.4 (S.C.) 1990, 914 F.2d 475, rehearing denied, certiorari denied 111 S.Ct. 1680, 499 U.S. 859, 113 L.Ed.2d 645.*

5. Issuance of license

Provision in subsec. d(1)(D) of this section that applicant for federal firearms dealers' license have "premises from which he conducts business" did not restrict issuance of licenses to applicants with "bona fide" firearms businesses or commercial enterprises with separate business premises and significant commercial operations such as business telephone, advertising, and regular business hours. *National Coalition to Ban Handguns v. Bureau of Alcohol, Tobacco & Firearms, C.A.D.C.1983, 715 F.2d 632, 230 U.S.App.D.C. 168.*

For purpose of judging whether applicant for renewal of license to deal in firearms "willfully" violated this chapter, "willful" meant action taken knowingly by one subject to statutory provisions in disregard of action's legality; no malicious intent was necessary. *Prino v. Simon, C.A.4 (W.Va.) 1979, 606 F.2d 449.*

Gubernatorial pardon of plaintiff, who had been convicted in Montana of felony of assault in the first degree, did not require that plaintiff,

seeking a license as a dealer and manufacturer of firearms, no longer be regarded as convicted within meaning of this section. Thrall v. Wolfe, C.A.7 (Wis.) 1974, 503 F.2d 813, certiorari denied 96 S.Ct. 1892, 420 U.S. 972, 48 L.Ed.2d 662.

6. Revocation of license

It would not have been reasonable for gun dealer to have thought his municipal license could not be revoked for cause; his federal license could have been, and it was almost inconceivable that the city would forswear all power to revoke as sensitive a privilege as a gun license. Baer v. City of Wauwatosa, C.A.7 (Wis.) 1963, 716 F.2d 1117.

Revocation of license to sell firearms was sufficiently supported by evidence of licensee's continuing violations of state and federal laws and regulations regarding sale of firearms and recordkeeping. Cisewski v. Department of Treasury, Bureau of Alcohol, Tobacco & Firearms, E.D.Wis.1991, 773 F.Supp. 148.

Federal license to deal and pawn firearms was properly revoked for licensee's repeated failure to follow recordkeeping procedures, despite licensee's recent attempts to cure its problems. A's Loan Office, Inc. v. U.S. Dept. of Treasury, Bureau of Alcohol, Tobacco and Firearms, E.D.Mich.1990, 738 F.Supp. 221.

7. Record keeping requirements

U.S. v. Scherer, C.A.7 (Ill.) 1975, 523 F.2d 871, [main volume] certiorari denied 96 S.Ct. 1108, 424 U.S. 911, 47 L.Ed.2d 815.

Regulation requiring that licensees maintain records concerning the receipt and disposition of their personal firearms, and not merely those personal firearms transferred from their business inventories, was reasonable and proper; however, to extent that the regulation required licensees to record information not specified in Firearms Owners Protection Act, the regulation was invalid. National Rifle Ass'n v. Brady, C.A.4 (S.C.) 1980, 914 F.2d 475, rehearing denied, certiorari denied 111 S.Ct. 1580, 499 U.S. 959, 118 L.Ed.2d 645.

Evidence that defendant knew of individual anxious to conduct business with firearms dealer willing to avoid paperwork required by federal law was relevant to proof of defendant's motive or intent in using his students to falsify 4473 forms, which are required records of firearms transactions. U.S. v. Lassiter, C.A.5 (Tex.) 1987, 819 F.2d 84.

For purposes of determining whether applicant for firearms dealer's license has "willfully" violated record-keeping requirements, knowledge of the legal obligation and plain indifference to the regulatory requirements will suffice as a "willful" violation justifying denial of license. Lewin v. Blumenthal, C.A.8 (Mo.) 1979, 590 F.2d 288.

Where individuals who signed defendant licensee's federal firearms record book did not individually either purchase the weapons or take delivery of them and the purpose of entering in log book true names and addresses of a number of people, rather than actual transferees or transferees, was to cover up fact that a large number of weapons were being accumulated in one place for specific purpose, defendants could

not escape conviction for making or causing to be made false entries in federal firearms record because individuals who signed book used their true names and addresses. U.S. v. Grady, C.A.2 (N.Y.) 1976, 544 F.2d 598.

Firearms dealership operator could not present evidence that operator was currently in compliance with recordkeeping regulations upon judicial review of decision by Department of Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF), to revoke operator's license to sell firearms for violation of such regulations; statute focused on willfulness of violations and compliance of firearms dealer before license was revoked. T.T. Salvage Auction Co. Inc. v. Secretary, U.S. Dept. of Treasury, E.D.N.C.1994, 859 F.Supp. 977.

Where licensee admitted on stand under oath that he was aware of specific legal obligations under this chapter to record dispositions of firearms within seven days and to maintain dispositional records for ammunition, and where there was no substantial controversy as to proof that extremely serious breaches of recordkeeping practices occurred in that licensee sold or delivered more than 1,600 firearms without recording their disposition and in that ammunition-disposition records were not maintained in a bound book or in chronological order, licensee was guilty of "willful" violation of such recordkeeping requirements. Shyda v. Director, Bureau of Alcohol, Tobacco and Firearms, U.S. Dept. of Treasury, M.D.Pa.1977, 448 F.Supp. 408.

Neither this section nor regulation requiring a licensed dealer to record the transfer of a firearm to a nonlicensee are ambiguous with respect to term "transaction date" and, hence, do not enable a licensed dealer to avoid requirement by reason of an alleged mistake in belief as to its meaning. U.S. v. Measner, E.D.Pa.1977, 428 F.Supp. 538.

Firearms transaction record does not constitute amendment or addition to identification card application nor is it additional requirement imposed by local licensing authority, but constitutes federal regulation of weapons transfers pursuant to power of federal government to regulate interstate commerce; thus, completion of federal form was prerequisite to purchasing rifle and shotgun, not prerequisites to obtaining identification card, and N.J.S.A. 20:58-3, sub. f, which prohibits licensing authorities from adding conditions or requirements to former content of application card or to requirements for obtaining issuance of identification card, other than those specifically set forth in same chapter, was not violated. State v. Fieva, N.J. Super.A.D.1985, 496 A.2d 875, 203 N.J. Super. 178, certification denied 508 A.2d 203, 102 N.J. 323.

10. Forfeitures

Fact that owner of firearms was acquitted in criminal prosecution for unlicensed dealing in firearms did not bar subsequent action to forfeit those firearms. U.S. v. One Assortment of 98 Firearms, D.C.S.C.1978, 468 F.Supp. 865.

11. Searches and seizures

U.S. v. Scherer, C.A.7 (Ill.) 1975, 523 F.2d 871, [main volume] certiorari denied 96 S.Ct. 1108, 424 U.S. 911, 47 L.Ed.2d 815.

City police officers' seizure of weapons in alleged violation of Fourth Amendment did not require excitation of evidence in prosecution for federal firearms violations, where agent for Bureau of Alcohol, Tobacco and Firearms arrived after officers had begun search and had authority to enter premises and conduct search without warrant; admitting evidence did not give Bureau incentive to encourage state law enforcement officials to violate Fourth Amendment and did not cause federal officials to be less sensitive to responsibilities under Fourth Amendment; and benefit resulting from deterrence of city police officers was minimal when compared with penalty that exclusion would impose on Federal Government. U.S. v. Ahidi, C.A.1 (R.I.) 1987, 835 F.2d 943, certiorari denied 108 S.Ct. 1273, 495 U.S. 978, 99 L.Ed.2d 484.

Agents from the Bureau of Alcohol, Tobacco and Firearms did not undertake authorized administrative inspection of defendant's firearms business as inspection did not occur during defendant's business hours; thus, illegally converted rifle obtained by agents was not admissible against defendant. U.S. v. Limatoc, C.A.9 (Haw.) 1987, 807 F.2d 762.

Where undercover officer knew from direct experience that federally licensed firearms dealer was operating his gun business out of his home, undercover officer, with other agents, had statutory authority to enter dealer's home to examine records and firearms, and, after doing so, had right to seize records and guns upon determining that they were evidence of crime. U.S. v. Carr, C.A.7 (Ill.) 1985, 783 F.2d 61, certiorari denied 105 S.Ct. 8479, 472 U.S. 1017, 87 L.Ed.2d 614.

Lawful statutory authority to search, like valid consent, includes right to examine and photocopy records inspected. U.S. v. Goff, D.Utah 1987, 877 F.Supp. 1523, on reconsideration 738 F.Supp. 1087.

12a. Burden of proof

In order to deny petitioner a firearms dealer's license, government must prove not only that applicant violated this section and section 922 of this title and regulations, but that he willfully violated them; and to prove a "willful" violation the government must prove that petitioner disregarded or was plainly indifferent to the record-keeping requirements. Powers v. Bureau of Alcohol, Tobacco and Firearms, Dept. of Treasury, N.D.Fla.1990, 605 F.Supp. 695.

12b. Willfulness

Violation of Gun Control Act's "willful" if it can be established that licensee understood requirements of law but knowingly failed to follow them or if licensee was indifferent to those requirements. T.T. Salvage Auction Co. Inc. v. Secretary, U.S. Dept. of Treasury, E.D.N.C. 1994, 859 F.Supp. 977.

12. Weight and sufficiency of evidence

U.S. v. Scherer, C.A.7 (Ill.) 1975, 523 F.2d 871, [main volume] certiorari denied 96 S.Ct. 1108, 424 U.S. 911, 47 L.Ed.2d 815.

§ 924. Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), or (f) of this section, or in section 923, whoever—

Evidence was sufficient to establish that defendant willfully failed to record receipt of certain weapons and willfully failed to record the sales of weapons to undercover police officers and therefore evidence was sufficient to sustain convictions for failing to record the receipt and sale of firearms in violation of Firearms Owners' Protection Act. U.S. v. Herr, C.A.8 (Ark.) 1991, 923 F.2d 764.

Where, by failing to dispute factual accuracy of administrative record, firearms dealer implicitly admitted to hundreds of violations of legal requirements of the Bureau of Alcohol, Tobacco and Firearms, after multiple warnings, Bureau's refusal to renew license to sell firearms was properly upheld notwithstanding dealer's offer to show that he was one of the highest volume retail firearms dealers in the district and had spent great deal of money trying to correct faulty recordkeeping system; and district court did not abuse discretion in ruling without evidentiary hearing. Gucciara v. Secretary of Treasury, C.A.9 (Cal.) 1981, 662 F.2d 23, certiorari denied 102 S.Ct. 1443, 455 U.S. 943, 71 L.Ed.2d 662.

13. Review

Under this section, district court is required to undertake de novo review of denial of application for license to deal in firearms, which review may be confined to administrative record or may be supplemented by admission of additional evidence but, in either event, trial court need not accord any particular weight to administrative findings and decision and may, in exercise of its discretion, accord them such weight as it believes they deserve. Stein's, Inc. v. Blumenthal, C.A.7 (Wis.) 1980, 649 F.2d 463.

This section providing for de novo review by the district court of Bureau of Alcohol, Tobacco and Firearms' revocation of a dealer's firearm license affords the district court the discretion to receive additional evidence to be considered along with the administrative record when some good reason to do so either appears in the administrative record or is presented by the party petitioning for judicial review. Perri v. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, C.A.9 (Ariz.) 1981, 637 F.2d 1332.

On review of administrative revocation of license to sell firearms, court limits its consideration of evidence which came into existence after administrative decision solely to evidence of other crimes, wrongs or acts offered to prove intent, knowledge, or absence of mistake or accident. Cisewski v. Department of Treasury, Bureau of Alcohol, Tobacco & Firearms, E.D.Wis. 1991, 773 F.Supp. 148.

Ordinary standard of administrative review does not apply to decisions of Bureau of Alcohol, Tobacco and Firearms revoking license to sell firearms and ammunition; since this chapter provides for introduction of evidence beyond that contained in administrative record, district court's review is "de novo." Shyda v. Director, Bureau of Alcohol, Tobacco and Firearms, U.S. Dept. of Treasury, M.D.Pa.1977, 448 F.Supp. 408.