DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-361; Ref: T.D. ATF-354 and Notice No. 789]

RIN: 1512-AB23

Implementation of Public Law 103–159, Including the Brady Handgun Violence Prevention Act (93F–057P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury. **ACTION:** Final rule; Treasury decision.

SUMMARY: This final rule implements the provisions of Public Law 103-159, including the Brady Handgun Violence Prevention Act. These regulations implement the law by imposing a waiting period of 5 days before a licensed firearms importer, licensed manufacturer, or licensed dealer may transfer a handgun (other than the return of a handgun to the person from whom it was received) to a nonlicensed individual. Regulations are also prescribed with regard to reporting requirements for multiple handgun sales, labeling of packages containing a firearm, theft of firearms from firearms licensees, and increased license fees for dealers in firearms.

Unless otherwise indicated, the temporary regulations published in the Federal Register on February 14, 1994 (T.D. ATF–354), are made permanent upon the effective date of this final rule. **EFFECTIVE DATE:** March 29, 1995.

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

SUPPLEMENTARY INFORMATION:

Legislative 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'' (hereinafter, "Brady" or "Brady law"), provides for a national waiting period of 5 days before a licensed importer, licensed manufacturer, or licensed dealer may transfer a handgun to a nonlicensed individual (interim provision), and for the establishment of a permanent national instant criminal background check system to be queried by firearms licensees before transferring any firearm to nonlicensed individuals.

The law requires that the permanent system be established not later than November 30, 1998. Violations of either the interim or permanent provision are punishable by a fine and/or imprisonment for not more than 1 year.

Titles II and III of Pub. L. 103–159 relate to reporting requirements for multiple handgun sales, labeling of packages containing a firearm, thefts of firearms from licensed firearms dealers, and increased license fees for dealers in firearms.

On September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322 (108 Stat. 1796) was enacted. Title XXXII of Pub. L. 103–322 amended the GCA by eliminating the Federal 5-day waiting period requirement imposed by Brady with respect to a licensee's return of a handgun to the person from whom it was received.

Waiting Period (Interim Provision)

The Brady law provides that the waiting period provisions of the law were effective on February 28, 1994, and cease to apply on November 30, 1998. Brady imposes a waiting period of 5 business days (defined in the statute as days on which State offices are open) before a licensee may sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to a nonlicensed individual. As defined in the Brady law, the term "handgun" means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

Basically, the waiting period provision makes it unlawful for any licensed firearms importer, manufacturer, or dealer to sell, deliver, or transfer a handgun to a nonlicensed individual (transferee), unless the licensee—

(1) obtains a statement of the transferee's intent to obtain a handgun containing the transferee's name, address, and date of birth appearing on a valid photo identification, a description of the identification document, a statement that the transferee is not a felon, under indictment, or otherwise prohibited from receiving or possessing the handgun under Federal law, and the date the statement is made;

(2) verifies the identity of the transferee by examining the identification document presented;

(3) within 1 day after the transferee furnishes the statement, contacts the

chief law enforcement officer (CLEO) of the place of residence of the transferee and advises such officer of the contents of the statement;

(4) within 1 day after the transferee furnishes the statement, transmits a copy of the statement to the CLEO of the place of residence of the transferee; and

(5) waits 5 business days from the date the licensee furnished notice of the contents of the statement to the CLEO before transferring the handgun to the transferee (during which period the licensee has not received information from the CLEO that receipt or possession of the handgun by the transferee would be in violation of law); or receives notice from the CLEO of the place of residence of the transferee that the officer has no information that the transferee's receipt or possession of the handgun would violate the law.

Subsequent to the sale or transfer of the handgun, the law requires a licensee who receives a report from a CLEO containing information that receipt or possession of the handgun by the transferee would violate Federal, State, or local law to communicate within 1 day any information the licensee has concerning the transfer to the CLEO of the place of business of the licensee and to the CLEO of the place of residence of the transferee.

As provided in Brady, the term "chief law enforcement officer" means "the chief of police, the sheriff, or an equivalent officer or the designee of any such individual." The law requires that the chief law enforcement officer within 5 business days make a reasonable effort to determine whether the transferee is prohibited by law from receiving or possessing the handgun sought to be purchased. Except for records relating to a proposed handgun sale that would violate the law, CLEOs are required to destroy within 20 days the purchaser's statement, any record containing information derived from the statement, and any record created as a result of the notice referred to in (3) above. Furthermore, these records may only be used to carry out the purposes of the Brady law, and no information in the records may be conveyed to any person for purposes other than complying with the Brady law.

Brady also provides that an individual who is determined to be ineligible to purchase a handgun under the waiting period provision may request that the CLEO who made the determination provide reasons for that determination. The officer must provide such reasons to the individual in writing within 20 business days after receipt of the request.