Alternatives to the Waiting Period

The statute provides the following alternatives to the waiting period provision:

- (1) The transferee provides a written statement issued within the last 10 days by the CLEO of the transferee's place of residence that the transferee requires a handgun because of a threat to the life of the transferee or any member of the transferee's household;
- (2) The transferee presents to the licensee a permit issued by the State within the past 5 years to possess a handgun and the law of the State requires verification that the transferee is not prohibited by law from possessing the handgun;
- (3) Purchases in States which require that, before any licensee transfers a handgun to an individual, an authorized government official has verified that possession of the handgun by the transferee would not violate the law (e.g., a background check);
- (4) Purchases of handguns 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);
- (5) Purchases of handguns for which the Secretary has certified that compliance with the 5-day waiting period procedure 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 CLEO of the area, and there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

Additional Provisions of Pub. L. 103–159

Titles II and III of Pub. L. 103–159 provide additional amendments to the GCA. These provisions, which became effective on November 30, 1993, are as follows:

- (1) Multiple sales reports. In addition to furnishing reports of multiple handgun sales to ATF, licensees are required to submit such reports to the "department of State police or State law enforcement agency of the State or local law enforcement agency of the jurisdiction in which the sale or other disposition took place."
- (2) Common carriers. Common or contract carriers are prohibited from requiring or causing any label or other written notice to be placed on the

outside of any package, luggage, or other container indicating that such package contains a firearm. In addition, common or contract carriers who deliver firearms in interstate or foreign commerce are required to obtain written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

- (3) Theft of firearms. It is unlawful for any person to steal from the person or premises of a Federal firearms licensee any firearm in the licensee's business inventory which has been shipped or transported in interstate or foreign commerce.
- (4) *License fees.* License fees for all dealers in firearms (other than destructive devices), including pawnbrokers, have been increased to \$200 for 3 years, except that the fee for renewal of a license is \$90 for 3 years.

Temporary Rule and Notice of Proposed Rulemaking

On February 14, 1994, ATF published in the Federal Register a temporary rule (T.D. ATF–354, 59 FR 7110) implementing the provisions of Public L. 103–159, including the Brady Handgun Violence Prevention Act. The temporary rule provided immediate guidance to Federal firearms licensees concerning their obligations under the Brady law.

On February 14, 1994, the Bureau also published a notice of proposed rulemaking cross-referenced to the temporary regulations (Notice No. 789, 59 FR 7115). The comment period for Notice No. 789 closed on May 16, 1994.

Analysis of Comments

ATF received 105 comments in response to Notice No. 789. Comments were submitted by Federal firearms licensees, nonlicensees, industry trade groups and other organizations (e.g., Collateral Loan & Secondhand Dealers Association of California, Handgun Control, Inc., and the National Rifle Association of America), members of Congress, law enforcement officials, one Federal agency, and one State Government.

Forty-five commenters, representing 43 percent of the total comments received, expressed opposition to the Brady law and urged its repeal. To accomplish this, however, legislative action would be necessary. Several other commenters requested changes that would also require legislative action. These include reducing or eliminating the license fees for gunsmiths, eliminating the provision of law with respect to the theft of firearms from a licensee, exempting police officers from the waiting period

requirement when purchasing a handgun for other than official use, eliminating the requirement that the licensee forward to the CLEO a copy of the transferee's statement of intent to obtain a handgun, and eliminating the 5-year limitation for permits in States that have a permit-to-purchase system. Other issues addressed in the comments will be discussed in the following paragraphs.

Pawn Transactions—Public Law 103–322

Twenty-five commenters disagree with ATF's interpretation that the Brady law applies to the redemption of a pawned handgun. They argue that the law was not intended to apply to pawn transactions where a handgun is redeemed by the owner.

Subsequent to publication of the temporary regulations, on September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994 was enacted as Pub. L. 103-322 (108 Stat. 1796). 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. Consequently, effective September 13, 1994, the Federal waiting period no longer applies to the redemption of a pawned handgun by the person from whom it was received. Accordingly, § 178.102(a) of the final regulations has been amended to include this exception to the requirements of the Brady law.

Background Check Fees

Several commenters, including licensees and nonlicensees, oppose the imposition of fees by law enforcement officials for background records checks. They argue that there is nothing in the Brady law or temporary regulations which allow CLEOs to charge a fee for such checks.

The Brady law is silent with respect to the imposition of fees for State and local officials performing records checks. It neither authorizes nor prohibits CLEOs from imposing such a fee. Consequently, such fees may be imposed pursuant to State or local law. Therefore, the final rule does not address such fees.

Form 5300.35

Some commenters suggested that Form 5300.35 and Form 4473 be combined into one form. This suggestion was not adopted. While the forms contain duplicative information, they serve distinct purposes and are executed at different times. Form