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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 478

[Docket No. ATF 24F; AG Order No. 3336 - 2012]

RIN 1140-AA08

Firearms Disabilities for Certain Nonimmigrant Aliens (2001R-332P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Final rule.

SUMMARY: In 2002, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) published an interim final rule implementing the provision of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, relating to firearms disabilities for certain nonimmigrant aliens. That regulation implemented the law by prohibiting, with certain exceptions, the sale or disposition of firearms or ammunition to, and the possession, shipment, transportation, or receipt of firearms or ammunition by, nonimmigrant aliens.

The Department of Justice has now determined that the relevant statutory prohibitions on transfer and possession of firearms and ammunition apply only to nonimmigrant aliens who were admitted to the United States under a nonimmigrant visa, and that the prohibitions do not apply to nonimmigrant aliens who lawfully entered the United States without a visa. The Department is therefore issuing this rule to make

conforming changes to the regulations, so that the regulations are consistent with the Department's current legal interpretation.

This final rule addresses only the nonimmigrant alien visa issue. The remaining issues raised by the 2002 interim final rule, and the public comments submitted with respect to those issues, will be addressed in a separate forthcoming rule.

DATES: This rule is effective July 9, 2012.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue, NE., Washington, DC 20226; telephone: 202-648-7094.

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 1998, Congress enacted the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 ("the Act" or "the 1998 Act"). Among other things, that Act amended the Gun Control Act of 1968, as amended (18 U.S.C. Chapter 44), to enact the provisions now codified in 18 U.S.C. 922(d)(5)(B) and 922(g)(5)(B). These provisions expanded the list of aliens subject to certain firearms and ammunition prohibitions by proscribing, with certain exceptions, the sale or disposition of firearms or ammunition to, and the possession, shipment, transportation, or receipt of firearms or ammunition by, aliens admitted to the United States under a nonimmigrant visa. These prohibitions became effective upon the date of enactment.

Section 101(a)(15) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15), describes various categories of nonimmigrant aliens, including, for example, diplomats, temporary visitors for business or pleasure, foreign students, participants in exchange programs, fiancée(s), and various categories of temporary workers in the United States. Not all nonimmigrant aliens admitted to the United States require a visa; for example, some nonimmigrant aliens may be admitted under the Visa Waiver Program (VWP). See 8 U.S.C. 1187.

Section 922(g)(5)(A) of title 18 makes it unlawful for any person who is an alien illegally or unlawfully in the United States to ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce, or possess any firearm or ammunition in or affecting commerce. Section 922(d)(5)(A) makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient is an alien illegally or unlawfully in the United States.

The 1998 Act amended section 922(g)(5) to expand the list of persons who may not lawfully ship, transport, possess, or receive firearms or ammunition to include, with certain exceptions, aliens admitted to the United States under a nonimmigrant visa, as that term is defined in section 101(a)(26) of the INA (8 U.S.C. 1101(a)(26)). The Act also amended section 922(d)(5) to make it unlawful to sell or dispose of a firearm or ammunition to an alien who has been admitted to the United States under a nonimmigrant visa, as that term is defined in section 101(a)(26) of the INA. There are exceptions to these general rules regarding aliens who have been admitted under nonimmigrant visas.

As specified in 18 U.S.C. 922(y)(2), the prohibition does not apply if the nonimmigrant alien is:

“(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is –

(i) accredited to the United States Government or the Government’s mission to an international organization having its headquarters in the United States, or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.”

In addition, section 922(y)(3) provides that any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the prohibition contained in section 922(g)(5)(B) if the Attorney General approves a petition for the waiver.

II. Interim Final Rule and Request for Comments

On February 5, 2002, ATF published in the **Federal Register** an interim final rule implementing the provisions of the 1998 Act relating to firearms disabilities for nonimmigrant aliens (67 FR 5422). On that same date, ATF also published in the **Federal Register** a proposed rule soliciting comments on the interim regulations (Notice No. 935, 67 FR 5428).

With respect to the scope of the statutory prohibitions for nonimmigrant aliens, which is the sole focus of this final rule, ATF noted in the interim rule that a nonimmigrant visa does not itself provide nonimmigrant status. A visa simply facilitates travel, and expedites inspection and admission to the United States, by showing that the State Department does not believe the individual to be inadmissible and has authorized him or her to apply for admission at a U.S. port of entry. Moreover, ATF asserted that, at that time, just under fifty percent of nonimmigrant aliens required a nonimmigrant visa to enter the United States. Other nonimmigrant aliens fell within various categories that were exempt from the nonimmigrant visa requirement for admission to the United States (e.g., aliens eligible for travel under the Visa Waiver Program; most Canadian visitors). Finally, ATF explained its belief that it would be inconsistent with the legislative history of the Act to adopt an interpretation of the prohibition that did not include all nonimmigrants lawfully admitted to the United States.

Based on these reasons, ATF interpreted the 1998 Act's statutory prohibitions to apply to any alien in the United States in a nonimmigrant classification, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(15)). That definition included, in large part, persons visiting the United States temporarily for business or pleasure, persons studying in the United States who maintain a residence abroad, and various categories of temporary foreign workers.

The interim rule also amended the regulations to give the Attorney General or his delegate the authority to require nonresidents bringing firearms and ammunition into the

United States for hunting or sporting purposes to obtain an import permit (except for those exempt importations specified in the regulations).¹

The comment period for Notice No. 935 closed on May 6, 2002.

III. Analysis of Comments: The Interim Rule is Inconsistent with the Plain Language of the Statute Regarding the Application of the Nonimmigrant Alien Prohibition

In response to Notice No. 935, ATF received 72 comments. Several commenters disagreed with ATF's broad interpretation that the new prohibitions on transfer and possession of firearms and ammunition in 18 U.S.C. 922(d)(5)(B) and 922(g)(5)(B) applied to all aliens in the United States in a nonimmigrant classification, not just those aliens who were admitted to the United States with a nonimmigrant visa.

For example, one commenter (Comment No. 60) noted that:

Nonimmigrant aliens not required to have visas are primarily Canadians or citizens of countries in the Visa Waiver Program (which are friendly to the U.S.), and this new statutory prohibition plainly does not apply to them. . . .
The proposed rule should be redrafted to conform to the statute.

The commenter further stated that, “[b]y confining the reach of the provision to aliens admitted under a non-immigrant visa, Congress made the policy decision not to include aliens from countries from which the United States does not require a visa.”

Similar concerns were raised by other commenters, including a trade association that represents the interests of importers and exporters of firearms and ammunition on matters that impact the industry.

¹ The text of the regulations expressly provides that the Secretary of the Treasury or his delegate possesses the authority to require these permits. After the January 2003 transfer of ATF from the Department of the Treasury to the Department of Justice, however, references to the Secretary of the Treasury were “deemed to refer” to the Attorney General. See 28 CFR 0.133(a)(4).

The U.S. Department of Defense (DOD) also disagreed with ATF's interpretation, particularly with respect to the possible application to foreign military personnel. DOD maintained that the regulations (1) are contrary to the plain language and legislative history of the Act, (2) are inconsistent with existing ATF regulatory treatment of foreign military personnel, and (3) have the potential to adversely affect national security and the global war on terrorism. DOD also asserted that Canadian and other allied military personnel are not admitted to the United States under a nonimmigrant visa, but rather are part of the Visa Waiver Program or are subject to other regulatory waivers.

ATF also received a number of public comments on other aspects of the interim rule. This final rule is limited solely to the nonimmigrant visa provisions. All other issues raised by the interim rule, and the public comments on those issues, will be addressed in a separate, forthcoming final rule.

IV. Advice from the Office of Legal Counsel

Given the commenters' concerns, in 2011 ATF requested the opinion of the Department of Justice's Office of Legal Counsel (OLC) regarding ATF's interpretation in the interim rule that the prohibition in 18 U.S.C. 922(g)(5)(B) applied to any alien who has the status of "nonimmigrant alien," regardless of whether the alien required a visa in order to be admitted to the United States. Pursuant to 28 U.S.C. 510, the Attorney General has delegated to OLC responsibility for, among other things, preparing the formal opinions of the Attorney General, rendering opinions to the various federal agencies, assisting the Attorney General in the performance of his function as legal advisor to the President, and rendering opinions to the Attorney General and the heads of the various organizational units of the Department of Justice. See 28 CFR 0.25.

In an October 28, 2011 memorandum to ATF, OLC concluded that the plain text of the statute applies only to nonimmigrant aliens who must have visas to be admitted to the United States, not to all aliens with nonimmigrant status: “[t]he statutory reference to nonimmigrants ‘admitted . . . under a nonimmigrant visa’ . . . indicates that Congress intended the firearms disabilities in section 922(g)(5)(B) to apply only to a subset of nonimmigrants—namely those who possess a ‘nonimmigrant visa.’”² OLC also found no affirmative support in the legislative history for the conclusion that the prohibition applies to all nonimmigrant aliens.

V. The Present Final Rule

Upon review of the comments and in light of the OLC opinion, the Department is issuing a final rule that applies the firearms disabilities in section 922(d)(5)(B) and 922(g)(5)(B) only to aliens admitted to the United States under a nonimmigrant visa, as that term is defined in section 101(a)(26) of the INA (8 U.S.C. 1101(a)(26)). Nonimmigrant aliens lawfully admitted to the United States without a visa, pursuant either to the Visa Waiver Program or other exemptions from visa requirements, will not be prohibited from shipping, transporting, receiving, or possessing firearms or ammunition, and the regulations will also no longer proscribe the sale or other disposition of firearms or ammunition to such nonimmigrant aliens.³

² Memorandum for Stephen R. Rubenstein, Chief Counsel, Bureau of Alcohol, Tobacco, Firearms and Explosives, from Virginia A. Seitz, Assistant Attorney General, Office of Legal Counsel, Re: Nonimmigrant Aliens and Firearms Disabilities under the Gun Control Act 4 (Oct. 28, 2011) (first omission in original).

³ Under section 217 of the INA, 8 U.S.C. 1187, 36 countries have been designated for participation in the Visa Waiver Program, and eligible nationals of those countries may seek admission to the United States without a nonimmigrant visa as temporary visitors for business or pleasure for up to 90 days, if otherwise admissible. See 8 CFR 217.2. VWP travelers are required to have a valid authorization through the Electronic System for Travel Authorization prior to travel. See 8 CFR 217.5. There is a separate visa waiver program for admission to Guam or the Commonwealth of the Northern Mariana Islands for eligible

Accordingly, this final rule makes conforming revisions to the regulations in 27 CFR 478.32, 478.44, 478.45, 478.99, 478.120, and 478.124. The final rule also amends the regulations by adding a definition for the term “Nonimmigrant visa” that mirrors the definition in section 101(a)(26) of the INA (8 U.S.C. 1101(a)(26)). ATF will be making conforming changes to the Form 4473 and its instructions. ATF is also making purely clarifying changes to the language of §§ 478.44 and 478.45 to more clearly state the statutory exceptions.

In addition, ATF is adding language in § 478.120(a) (and will also be revising the Form 6NIA) to make clear that nonimmigrants lawfully admitted to the United States without a visa will continue to be required to apply for and obtain an approved Form 6NIA if they are temporarily importing or bringing firearms or ammunition into the United States for lawful hunting or sporting purposes. The amended § 478.120, however, will no longer require nonimmigrant aliens admitted to the United States without a visa to submit documentation that they fall within one of the exceptions in 18 U.S.C. 922(y)(2) or the waiver in section 922(y)(3).⁴ The existing provisions of § 478.120 are being

travelers from 12 designated countries and geographic areas for temporary visits for business or pleasure for up to 45 days. See 8 CFR 212.1(q). Nonimmigrant aliens may be eligible for travel to the United States without a visa under additional authorities. See, e.g., 8 CFR 212.1; 22 CFR 41.2(l); http://www.travel.state.gov/visa/temp/without/without_1990.html#countries.

Canadian citizens are permitted to enter the United States as nonimmigrants without a visa for most purposes. However, certain categories of Canadians are required to enter with a visa (falling within the nonimmigrant visa categories E, K, S, or V). See 8 CFR 212.1(a)(1); 22 CFR 41.2(a).

Other regulatory provisions allow nationals of certain other countries to enter the United States without a visa in limited circumstances. See generally 8 CFR 212.1; 22 CFR 41.2. However, with only very narrow exceptions, Mexican nationals generally require a nonimmigrant visa (or a Border Crossing Card, Form DSP-150, which is itself a visa) to be admitted to the United States. See 8 CFR 212.1(c); 22 CFR 41.2(g).

⁴ Aliens who desire to import firearms or ammunition for other than legitimate hunting or lawful sporting purposes may apply for an import permit by filing an ATF Form 6-Part I.

recodified in paragraph (b), which deals with aliens who are admitted under a nonimmigrant visa (and who are required to submit such documentation).

In the 2002 interim rule, ATF explained its reasons for imposing a requirement that nonimmigrants bringing firearms and ammunition into the United States for hunting or sporting purposes obtain an import permit. See 67 FR at 5424; see also 27 CFR 478.115(e) (“Notwithstanding the provisions of paragraphs (d) (1), (2), (3), (4) and (5) of this section, the [Attorney General] or his delegate may in the interest of public safety and necessity require a permit for the importation or bringing into the United States of any firearms or ammunition.”). Even though aliens admitted to the United States who did not require a nonimmigrant visa will no longer be subject to the nonimmigrant prohibition on possession of firearms, the 2002 interim rule also cited two additional reasons for requiring **all** nonimmigrant aliens seeking to bring firearms or ammunition into the United States to obtain import permits: “It will also enable ATF to be aware of non-immigrant aliens who are bringing or attempting to bring firearms or ammunition into the United States. Finally, it will ensure nonimportable firearms and ammunition do not enter the United States.” 67 FR at 5424. In short, the permit process is designed to ensure that the nonimmigrant aliens can lawfully possess a firearm in the United States (i.e., that they do not fall within any of the other statutory prohibitions on possession of firearms) and it gives ATF an opportunity to conduct a background check on the applicant if warranted.⁵ Thus, the language of § 478.120(a) makes no change in the status quo for nonimmigrant aliens lawfully admitted to the United States without a visa,

⁵ Regulations at 28 CFR 25.6(j)(1) allow access to the National Instant Criminal Background Check System Index for purposes of providing information to federal agencies in connection with issuance of a firearms-related or explosives-related permit or license.

except that they will no longer be required to submit documentation that they fall within one of the statutory exceptions for the nonimmigrant prohibition, consistent with the changes being made in this final rule.

The remaining issues raised in the interim rule (including other issues with respect to the regulations in 27 CFR 478.120 on importation of firearms and ammunition), along with a discussion of the comments received in response to these aspects of the interim rule, will be addressed in a separate, forthcoming final rule.⁶

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866 and Executive Order 13563

This rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation, and with Executive Order 13563, “Improving Regulation and Regulatory Review.” The Department of Justice has determined that this rule is a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget (OMB). However, this rule will not have an annual effect on the economy of \$100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the

⁶ With respect to the concerns presented by DOD, ATF notes that nonimmigrant aliens designated as distinguished foreign visitors by the State Department, as well as foreign military personnel, are exempt, under certain circumstances, from the general prohibition on aliens possessing firearms in the United States. Foreign military personnel are exempt from the prohibition when they can verify that the firearm or ammunition they seek to possess is for their exclusive use in performance of their official duties while in the United States and that the firearm or ammunition will be removed from the United States when they leave. This is consistent with the information provided on ATF Form 6NIA (5330.3D), Application/Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens. General Information number 4 exempts certain diplomats, distinguished foreign visitors, law enforcement officers of friendly foreign governments entering the United States on official law enforcement business, and foreign military officers entering the United States on official duty.

environment, public health, or safety, or State, local or tribal governments or communities. Accordingly, this rule is not an economically significant rulemaking action for purposes of review under Executive Order 12866.

Further, the Department has assessed both costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this regulation justify the costs. The Department believes that the costs associated with compliance with this final rule are minimal. This final rule does not adversely affect U.S. businesses. This rule will simplify the process for nonimmigrant aliens who were not admitted to the United States under a nonimmigrant visa to purchase and rent items from these businesses for legitimate purposes. There will be negligible cost or time impact on individuals.

B. Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605-612) 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. The Attorney General has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Most U.S. firearms dealers should not be significantly impacted by this final rule. The restrictions on the purchase of firearms by aliens admitted under a nonimmigrant visa have not changed under this final rule. (The provisions of the interim final rule relating to these aliens, and the public comments concerning these provisions, will be addressed in a separate, forthcoming final rule.) Individuals traveling to the United States with a valid hunting license, or registrations or invitations to trade shows or competitive sporting events, are still able to purchase ammunition and accessories and rent firearms. Additionally, nonimmigrant aliens may purchase firearms for export to their home countries. Moreover, nonimmigrants admitted to the United States who did not require a visa are no longer considered to be prohibited, and accordingly they would not need to avail themselves of the exceptions under 18 U.S.C. 922(y)(2) or the waiver under section 922(y)(3).

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in

an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Paperwork Reduction Act

The regulations that are being amended in this final rule revise collections of information covered by the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. ch. 35, and its implementing regulations, 5 CFR Part 1320. The collections of information at §§ 478.44, 478.45, 478.120, and 478.124(c)(3)(iii), were approved by OMB under control number 1140-0060 under the interim rule. On November 15, 2011, the Department published a 60-day notice of information collection in the **Federal Register** advising the public that it was seeking an extension of the currently approved collection (1140-0060) and requesting comments from the public and affected agencies on the information collection (76 FR 70757). The comment period closed on January 17, 2012. On January 20, 2012, the Department published a notice in the **Federal Register** advising that it was seeking public comment for an additional 30 days (77 FR 3006). The extended comment period closed on February 21, 2012 (77 FR 4828, Jan. 31, 2012). ATF did not receive any comments concerning the information collection. However,

ATF has advised OMB of certain changes that needed to be made to the approved information collection as a result of this final rule, e.g., number of respondents, burden hours, etc.

In addition, ATF requested emergency clearance from OMB of revisions to control number 1140-0020 (Form 4473) to conform with these regulatory changes, and OMB approved those revisions on April 13, 2012, for a period of 180 days.

ATF also intends to make revisions to Form 6NIA (approved by OMB under control number 1140-0084), Form 7 (approved by OMB under control number 1140-0018), and Form 7CR (approved by OMB under control number 1140-0038) to conform with the regulatory changes made in this final rule. These information collections will be submitted to OMB for review and approval. In the interim, to ensure that these forms are completed in a way that conforms with this regulation, ATF will distribute an informational notice with the affected forms notifying applicants of the changes and providing clarification as to the proper completion of the forms.

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 OMB.

Disclosure

Copies of the interim rule, the notice of proposed rulemaking (NPRM), all comments received in response to the NPRM, and this final rule will be available for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E-062, 99 New York Avenue, NE., Washington, DC 20226; telephone: 202-648-8740.

Drafting Information

The author of this document is James P. Ficaretta, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 478

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Nonimmigrant aliens, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR Part 478 is amended as follows:

PART 478--COMMERCE IN FIREARMS AND AMMUNITION

- 1. The authority citation for 27 CFR part 478 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921-931; 44 U.S.C. 3504(h).

- 2. Section 478.11 is amended by adding a definition for the term “Nonimmigrant visa” in alphabetical order to read as follows:

§ 478.11 Meaning of terms.

* * * * *

Nonimmigrant visa. A visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in the Immigration and Nationality Act, 8 U.S.C. 1101 et seq.

* * * * *

3. Section 478.32 is amended by revising the introductory text of paragraphs (a)(5)(ii) and (d)(5)(ii), and by revising paragraph (f), to read as follows:

§ 478.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

(a) * * *

(5) * * *

(ii) Except as provided in paragraph (f) of this section, has been admitted to the United States under a nonimmigrant visa: Provided, That the provisions of this paragraph (a)(5)(ii) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is-

* * * * *

(d) * * *

(5) * * *

(ii) Except as provided in paragraph (f) of this section, has been admitted to the United States under a nonimmigrant visa: Provided, That the provisions of this paragraph (d)(5)(ii) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is-

* * * * *

(f) Pursuant to 18 U.S.C. 922(y)(3), any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the prohibition contained in paragraph (a)(5)(ii) of this section if the Attorney General approves a petition for the waiver.

4. Section 478.44 is amended by revising paragraph (a)(1)(iii), and by revising the second sentence in paragraph (b), to read as follows:

§ 478.44 Original license.

(a)(1) * * *

(iii) If 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 an alien who has been admitted to the United States under a nonimmigrant visa, applicable documentation demonstrating that the alien falls within an exception specified in 18 U.S.C. 922(y)(2) (e.g., a hunting license or permit lawfully issued in the United States) or has obtained a waiver as specified in 18 U.S.C. 922(y)(3); and

* * * * *

(b) * * * If 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 an alien who has been admitted to the United States under a nonimmigrant visa, the application must include applicable documentation demonstrating that the alien falls within an exception specified in 18 U.S.C. 922(y)(2) (e.g., a hunting license or permit lawfully issued in the United States) or has obtained a waiver as specified in 18 U.S.C. 922(y)(3). * * *

* * * * *

5. Section 478.45 is amended by revising the second sentence to read as follows:

§ 478.45 Renewal of license.

* * * If the applicant is an alien who has been admitted to the United States under a nonimmigrant visa, the application must include applicable documentation demonstrating that the alien falls within an exception specified in 18 U.S.C. 922(y)(2) (e.g., a hunting license or permit lawfully issued in the United States) or has obtained a waiver as specified in 18 U.S.C. 922(y)(3). * * *

* * * * *

6. Section 478.99 is amended by revising the introductory text of paragraph (c)(5) to read as follows:

§ 478.99 Certain prohibited sales or deliveries.

* * * * *

(c) * * *

(5) Is an alien illegally or unlawfully in the United States or, except as provided in § 478.32(f), is an alien who has been admitted to the United States under a nonimmigrant visa: Provided, That the provisions of this paragraph (c)(5) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa if that alien is—

* * * * *

7. Section 478.120 is revised to read as follows:

§ 478.120 Firearms or ammunition imported by or for a nonimmigrant alien.

(a) General. A nonimmigrant alien temporarily importing or bringing firearms or ammunition into the United States for lawful hunting or sporting purposes must first obtain an approved ATF Form 6NIA (5330.3D).

(b) Aliens admitted to the United States under a nonimmigrant visa. (1) Any alien lawfully admitted to the United States under a nonimmigrant visa who completes an ATF Form 6NIA to import firearms or ammunition into the United States, or any licensee who completes an ATF Form 6 to import firearms or ammunition for such nonimmigrant alien, must attach applicable documentation to the Form 6NIA or Form 6 establishing the nonimmigrant alien falls within an exception specified in 18 U.S.C. 922(y)(2) (e.g., a hunting license or permit lawfully issued in the United States) or has obtained a waiver as specified in 18 U.S.C. 922(y)(3).

(2) Aliens admitted to the United States under a nonimmigrant visa importing or bringing firearms or ammunition into the United States must provide the United States Customs and Border Protection with applicable documentation (e.g., a hunting license or permit lawfully issued in the United States) establishing the nonimmigrant alien falls within an exception specified in 18 U.S.C. 922(y)(2) or has obtained a waiver as specified in 18 U.S.C. 922(y)(3) before the firearm or ammunition may be imported. This provision applies in all cases, whether or not a Form 6 is needed to bring the firearms or ammunition into the United States.

(Approved by the Office of Management and Budget under control number 1140-0060)

8. Section 478.124 is amended by revising paragraph (c)(3)(iii) to read as follows:

§ 478.124 Firearms transaction record.

* * * * *

(c) * * *

(3) * * *

(iii) Must, in the case of a transferee who is an alien admitted to the United States under a nonimmigrant visa who states that he or she falls within an exception to, or has a waiver from, the prohibition in section 922(g)(5)(B) of the Act, have the transferee present applicable documentation establishing the exception or waiver, note on the Form 4473 the type of documentation provided, and attach a copy of the documentation to the Form 4473; and

* * * * *

June 1, 2012
Date _____

Eric H. Holder, Jr.
Attorney General

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