**HANDGUN CONTROL**

ONE MILLION STRONG . . . working to keep handguns out of the wrong hands.

# FAX COVER SHEET

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PLEASE DELIVER TO: Rahm Emanuel

ORGANIZATION: Karen Popp

**Handgun Control, Inc.**
**Federal Legislation Department**

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President and
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**HANDGUN CONTROL**

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# MEMORANDUM

TO: Rahm Emanuel
Senior Advisor to the President

FROM: Robert Walker
President, Handgun Control, Inc.

Dennis Henigan
General Counsel, Handgun Control, Inc.

DATE: June 4, 1997

RE: New Regulation Requiring Gun Warning

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In seeking to keep handguns out of the hands of minors, the Department of the Treasury should consider issuing a new regulation barring the sale of any handgun by a federal licensee (including manufacturers, importers and dealers), that is not accompanied by a written warning as to unsafe gun storage.

The authority to issue such a regulation arguably is found in 18 U.S.C. § 926(a), which provides that the Secretary of the Treasury "may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter." In National Rifle Association v. Brady, 914 F.2d 475, 479 (4th Cir. 1990), the Fourth Circuit held that, despite the addition of the word "only" (and other changes) to this provision made by the Firearms Owners Protection Act of 1986, § 926(a) "almost inevitably confers some measure of discretion to determine what regulations are in fact 'necessary'." Thus, the issue is whether the government can make a reasonable case that the warning is "necessary" to carry out any of the provisions of the Gun Control Act, as amended.

The Kohl Amendment, passed as part of the 1994 Crime Bill, makes it unlawful for a juvenile to knowingly possess a handgun, unless the possession falls within certain specified exceptions, including possession with the written consent of a parent or guardian or in connection with ranching activities. 18 U.S.C. § 922 (x)(1). Thus, the statutory scheme permits juvenile possession of handguns only under certain narrowly defined circumstances in which the risk to public safety is diminished. Of course, when a juvenile gains possession of a handgun because it is left unlocked and accessible, his/her possession violates the statute and creates the very risk the statute was enacted to prevent. Arguably, a warning to gun owners to lock their handguns away from the reach of minors is "necessary" to carry out the prohibition on juvenile possession.

To bolster the case for Treasury's authority, the warning should use language closely connected to the statutory provision on juvenile possession. One possibility would read:

> POSSESSION OF HANDGUNS BY PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED, UNDER MOST CIRCUMSTANCES, BY FEDERAL LAW. IN ORDER TO PREVENT UNLAWFUL JUVENILE POSSESSION OF HANDGUNS, YOU SHOULD STORE ALL HANDGUNS UNLOADED AND LOCKED IN A LOCATION SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO MINORS.

Although there is a colorable argument supporting Treasury's power to require such a warning, there is nevertheless serious doubt that such a regulation would survive a court challenge. Our argument in favor of the regulation is essentially that a regulation is "necessary" to carry out the provisions of the Gun Control Act as long as it makes those provisions more effective. This argument confers far-reaching legal authority on Treasury. For example, under such a rationale, Treasury would have the authority to require radical design changes in guns to prevent their use by anyone but the authorized owner because such changes would make the Gun Control Act more effective in preventing use of guns by high-risk persons, like kids and criminals. Realizing the implications of our theory of ATF's authority, there is substantial doubt that the courts would adopt it.

**COMBATTING JUVENILE CRIME:**
**COMMUNITIES WORKING TOGETHER**

I. Opening Statement by POTUS, VP, or AG (8:30-9:00)

II. Panel Presentations (each followed by Q & A)

**A. Targeting Guns and Drugs (9:00-10:15)**

Possible Moderator: Secretary Shalala

1. **Frederick Thieman, United States Attorney, Western District of PA**
   Chair of Allegheny County's Crime Prevention Council, leading example of how bringing together disparate parts of the community can reduce juvenile crime. Focus on role of community in reducing youth violence.
2. **Mark Rosenberg, M.D., Ph.D., Center for Disease Control, Atlanta, GA**
   Gun Violence as a Public Health Issue (focus on injuries, value of child safety locks).
3. **Leon West, Director, Nat'l Anti-Drug and Violence Program, Congress of National Black Churches, Washington, DC**
   Will talk about positive values - keeping kids off drugs.
4. **Naya Arbiter, Amity Foundation, Miramonte, CA**
   Drug treatment expert; will discuss value of juvenile drug testing/treatment
5. **Mrs. Patricia Williams, mother of child killed in gun accident, founder of GRIEF (Gun Responsibility in Every Family), Muncie, IN**
   Will talk about her tragedy and the value of anti-gun program, parent activism
6. **Hun Khem, age 17, Former Gang Member, St. Paul, MN**
   Will talk about joining and then rejecting gang life

**B. Targeting Gang Violence (10:30-11:45)**

Possible Moderator: PCPC Director Jeanie Nelson

1. **Christopher Droney, United States Attorney, Dist. Connecticut**
   Success stories in CT, partnerships with state and local gov't
2. **Ralph Martin, District Attorney, Suffolk County, MA**
   Success in Boston, what resources local prosecutors need
3. **Joan Moore, Dist. Professor Emeritus, Sociology, Univ. Wisconsin**
   The Psychology of Gangs: how to stop them based on what makes them start

**Leanne A. Shimabukuro** 06/06/97 07:46:21 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP

cc: Elena Kagan/OPD/EOP
Subject: directive

I spoke with Karen Popp and she thought you should work out a basic shell of the directive which could act as a working document for DPC, WH counsel, Treasury/ATF and Justice. You'll be happy to know that she will be around this weekend, so you can definitely call her.

I talked to her and ATF general counsel about suggested directive language that could help us accomplish our policy goals. Here's some general language for you to consider--

Treasury is directed to:

1. Issue regulations to require a warning statement on child safety/safe storage/juvenile handgun possession to be contained in the license issued by Treasury to FFLs.; and require the license/warning to be posted in a location where the public can see it.

2. Issue regulations requiring FFLs to distribute a written notice --which could include stickers-- with every handgun which states that it is illegal to transfer a handgun to a juvenile.

My general thought is that we don't need to come up with the actual language of the warning, but we do need to decide what the parameters of the "warning" should be in the first place.

Other thoughts:

* We could have language for FFLs to post some other warning sign (larger or different from the license) on a voluntary basis. This probably isn't too useful, because we have no idea if they would do it.

* The directive should have some sort of line which says that the written notifications should in no way affect existing rights. This could help to ensure that the notices aren't used as a defense to liability in states where people can sue for gun accidents.

* Karen said that in addition to have language on public safety, it is critical to focus on preventing illegal juvenile handgun possession (since this is the best hook ATF has to regulate.)

Hope some of this is useful. I'll talk to you Sunday when I get back into town.

26 USC 9007. (e) Section 9007(b)(3) of the Internal Revenue Code of 1954 (relating to repayments) is amended by striking out "9006(d)" and inserting in lieu thereof "9006(c)".

26 USC 9012. (f) Section 9012(b)(1) of the Internal Revenue Code of 1954 (relating to contributions) is amended by striking out "9006(d)" and inserting in lieu thereof "9006(c)".

Approved May 11, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-917 accompanying H.R. 12406 (Comm. on House Administration) and No. 94-1057 (Comm. of Conference).
SENATE REPORT No. 94-677 (Comm. on Rules and Administration).
CONGRESSIONAL RECORD, Vol. 122 (1976):
Mar. 15-18, 23, 24, considered and passed Senate.
Apr. 1, considered and passed House, amended, in lieu of H.R. 12406.
May 3, House agreed to conference report.
May 4, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 12, No. 20:
May 11, Presidential statement.



# Public Law 94-284
# 94th Congress

## An Act

To amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations, and for other purposes.

May 11, 1976
[S. 644]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Consumer Product Safety Commission Improvements Act of 1976. 15 USC 2051 note.

### SHORT TITLE

SECTION 1. This Act may be cited as the "Consumer Product Safety Commission Improvements Act of 1976".

### AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Section 32(a) of the Consumer Product Safety Act (15 U.S.C. 2081(a)) is amended to read as follows:

"(a) There are authorized to be appropriated for the purposes of carrying out the provisions of this Act (other than the provisions of section 27(h) which authorize the planning and construction of research, development, and testing facilities) and for the purpose of carrying out the functions, powers, and duties transferred to the Commission under section 30, not to exceed— 15 USC 2076.

"(1) $51,000,000 for the fiscal year ending June 30, 1976;

"(2) $14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976;

"(3) $60,000,000 for the fiscal year ending September 30, 1977; and

"(4) $68,000,000 for the fiscal year ending September 30, 1978.".

### LIMITATIONS ON JURISDICTION

SEC. 3. (a) Section 2(2) of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471(2)) is amended by (1) striking out subparagraph (B), and (2) redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) Section 3(a)(1)(D) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)(D)) is amended by striking out "economic poisons" and inserting in lieu thereof "pesticides".

(c) Section 2(f)2 of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)(2)) is amended by inserting immediately before "but such term" the following: "nor to tobacco and tobacco products,".

(d) Section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)) is amended by (1) inserting "other" before "limitations" in the last sentence, and (2) inserting before such sentence the following: "Except for the regulation under this Act or the Federal Hazardous Substances Act of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 30 of this Act to regulate any product or article described in subparagraph (E) of this paragraph or described, without regard to quantity, in section 845(a)(5) of title 18, United States Code.". 15 USC 2079.

Manufacture or sale of firearms. 15 USC 2080 note.

(e) The Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, including black powder or gunpowder for firearms.

(f) The second sentence of section 30(a) of the Consumer Product Safety Act (15 U.S.C. 2079(a)) is amended by (1) striking out "of the Administrator of the Environmental Protection Agency and"; and (2) striking out "Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970" and inserting in lieu thereof "Federal Food, Drug, and Cosmetic Act (15 U.S.C. 301 et seq.)". 21 USC 301.

BUDGET AND EMPLOYEE PROVISIONS

SEC. 4. (a) Section 4(f) of the Consumer Product Safety Act (15 U.S.C. 2053(f)) is amended by adding at the end thereof the following new paragraph:

"(3) Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission.".

(b) Section 4(g) of such Act (15 U.S.C. 2053(g)) is amended by (1) striking out "full-time" in paragraph (2) and inserting in lieu thereof "regular", and (2) adding after such paragraph the following new paragraphs:

"(3) In addition to the number of positions authorized by section 5108(a) of title 5, United States Code, the Chairman, subject to the approval of the Commission, and subject to the standards and procedures prescribed by chapter 51 of title 5, United States Code, may place a total of twelve positions in grades GS-16, GS-17, and GS-18. 5 USC 5101 et seq. 5 USC 5332 note.

"(4) The appointment of any officer (other than a Commissioner) or employee of the Commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President."

ACCOUNTABILITY

SEC. 5. (a) Section 4 of the Consumer Product Safety Act (15 U.S.C. 2053) is amended by adding at the end the following new subsection:

"(i) Subsections (a) and (h) of section 2680 of title 28, United States Code, do not prohibit the bringing of a civil action on a claim against the United States which—

"(1) is based upon—

"(A) misrepresentation or deceit before January 1, 1978, on the part of the Commission or any employee thereof, or

"(B) any exercise or performance, or failure to exercise or perform, a discretionary function on the part of the Commission or any employee thereof before January 1, 1978, which exercise, performance, or failure was grossly negligent; and

"(2) is not made with respect to any agency action (as defined in section 551(13) of title 5, United States Code).

In the case of a civil action on a claim based upon the exercise or performance of, or failure to exercise or perform, a discretionary function, no judgment may be entered against the United States unless the court in which such action was brought determines (based upon consideration of all the relevant circumstances, including the statutory responsibility of the Commission and the public interest in encouraging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable.".



(b) Section 32 of such Act (15 U.S.C. 2081) is amended by adding at the end the following new subsection:

"(c) No funds appropriated under subsection (a) may be used to pay any claim described in section 4(i) whether pursuant to a judgment of a court or under any award, compromise, or settlement of such claim made under section 2672 of title 28, United States Code, or under any other provision of law.".

SAMPLING PLANS

SEC. 6. Section 7(a) of the Consumer Product Safety Act (15 U.S.C. 2056(a)) is amended by (1) inserting "(1)" immediately after "(a)", (2) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and (3) adding at the end the following new paragraph:

"(2) No consumer product safety standard promulgated under this section shall require, incorporate, or reference any sampling plan. The preceding sentence shall not apply with respect to any consumer product safety standard or other agency action of the Commission under this Act (A) applicable to a fabric, related material, or product which is subject to a flammability standard or for which a flammability standard or other regulation may be promulgated under the Flammable Fabrics Act, or (B) which is or may be applicable to glass containers.". 15 USC 1191 note.

STANDARDS DEVELOPMENT

SEC. 7. (a) The last sentence of section 7(b) of the Consumer Product Safety Act (15 U.S.C. 2056(b)) is amended to read as follows: "An invitation under paragraph (4)(B) shall specify the period of time in which the offeror of an accepted offer is to develop the proposed standard. The period specified shall be a period ending 150 days after the date the offer is accepted unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate.".

(b) Section 7(e)(1) of such Act (15 U.S.C. 2056(e)(1)) is amended to read as follows:

"(e)(1) If the Commission publishes a notice pursuant to subsection (b) to commence a proceeding for the development of a consumer product safety standard for a consumer product and if— Notice.

"(A) the Commission does not, within 30 days after the date of publication of such notice, accept an offer to develop such a standard, or

"(B) the development period (specified in paragraph (3)) for such standard ends,

the Commission may develop a proposed consumer product safety rule respecting such product and publish such proposed rule.".

(c) Section 7(f) of such Act (15 U.S.C. 2056(f)) is amended to read as follows:

"(f) If the Commission publishes a notice pursuant to subsection (b) to commence a proceeding for the development of a consumer product safety standard and if— Publication in Federal Register.

"(1) no offer to develop such a standard is submitted to, or, if such an offer is submitted to the Commission, no such offer is accepted by, the Commission within a period of 60 days from the publication of such notice (or within such longer period as the