

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
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NRA

Office of the Executive Director
CHRIS W. COX

June 19, 2009

U.S. Customs and Border Protection
Office of International Trade, Regulations and Rulings
Attention: Intellectual Property and Restricted Merchandise Branch
Mint Annex, 799 9th Street N.W.
Washington D.C. 20229

Re: Proposed expansion and redefinition of 19 CFR § 12.95(a)(1)

This letter is offered as formal comment on behalf of the National Rifle Association of America (NRA) and its members, most of whom carry at least one pocket knife on a regular basis.¹ Folding knives are not merely often more practical than fixed blade knives for sportsmen; they are frequently safer as the cutting surface is encased until needed. Folding knives designed to be opened with one hand are of greater utility still. A person in normal life or in the wild is often faced with the need to apply a knife when one hand is holding another object or, in an emergency, may be broken or trapped. Persons with arthritis or poor fine motor control due to age or infirmity cannot often use traditional designs of folding knives. For amputees the situation is manifest. The ability to easily deploy a folding knife by a spring assisted mechanism in an emergency can be of vital assistance. The practical uses of such knives, however, are not the primary object to be highlighted; rather, the arbitrary and capricious nature of this ruling reversal is the problem in this case.

On May 1, 2009 Customs and Border Patrol (CBP) issued the following:

In HQ 116315, HQ W116730, HQ H016666, and HQ H032255, CBP determined that certain knives with spring- or release-assisted opening mechanisms were admissible pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241-1245 and the CBP Regulations promulgated pursuant thereto and set forth in 19 CFR §§

¹ NRA conducts a weekly online poll of our e-mail alert and website readers on different issues. When asked if they regularly carry lock-blade knives, approximately 72% of over 16,000 unique respondents said they do.

12.95-12.103. Based on our recent review and reconsideration of HQ 116315, HQ W116730, HQ H016666, and HQ H032255, and reexamination of several of the knives therein at issue, we have determined that the admissibility determination in the aforementioned rulings is incorrect. It is now CBP's position that knives incorporating spring- and release-assisted opening mechanisms are prohibited from entry into the United States pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241-1245.

from 19 CFR PART 177 (p.7).

The Federal Switchblade Act, and in particular Section 1241(b) of that Act, defines "switchblade knife" as:

"Any knife having a blade which opens automatically (1) by hand pressure applied to a button or other device in the handle of the knife or (2) by operation of inertia, gravity or both."

Spring assisted knives are opened by applying outward pressure on the blade itself by a pin or other protrusion in the blade itself until a spring mechanism is activated, at which point the knife opens fully by spring pressure. Such a mechanism does not transfer energy from the hand to the mass of the blade and the spring acts alone to fully open the knife. There is no "button or other device in the handle" and such an action is not affected by "inertia, gravity or both".

Since neither a button nor other device on the handle is present, we must move to inertia or gravity. Gravity is clearly not involved, as the knives in question open the same without regard to orientation to the earth and thus to gravity. This then leaves only inertia, defined below:

"inertia [NL,fr. L, lack of skill, fe. *Inert-*, *iners*] (1713) **1 a** : a property of matter by which it remains at rest or in uniform motion in the same straight line unless acted upon by some external force **b** : an analogous property of other physical quantities (as electricity) **2** : indisposition to motion, exertion, or change"²

Springs are not inertia driven or operated. Assisted opening knives are not inertial switchblades. Put simply, the definition and therefore the statutory authority of CBP is clearly exceeded by the new language. The new language varies markedly and literally from the enabling act it is claimed to be based on and is therefore arbitrary and

² Webster's Ninth New Collegiate Dictionary (1983).

capricious.³ Unlike Motor Vehicle Manufacturers Association, in which the issue involved a failure to justify the repeal of a standard by appropriate criteria, in this matter Customs has simply failed to follow the plain meaning of the statute.

For the aforementioned reasons, the NRA respectfully requests the ruling reversal be abandoned.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris W. Cox', with a stylized, cursive script.

Chris W. Cox

³ Motor Vehicle Manufacturers Association of the United States, Inc., v. State Farm Mutual Automobile Insurance Company, 463 U.S. 29, 43 (1983).