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January 11, 2019

The Honorable Lindsey Graham
Chairman
The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jerrold Nadler
Chairman
The Honorable Doug Collins
Ranking Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives:
Bump-Stock-Type Devices*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) entitled “Bump-Stock-Type Devices” (RIN: 1140-AA52). We received the rule on December 27, 2018. The *Congressional Record* does not reflect when it was received by either House of Congress. It was published in the *Federal Register* as a final rule on December 26, 2018. 83 Fed. Reg. 66,514. The effective date of the final rule is March 26, 2019.

The final rule amends the regulations of ATF to clarify that bump-stock-type devices—meaning “bump fire” stocks, slide-fire devices, and devices with certain similar characteristics—are “machineguns” as defined by the National Firearms Act of 1934 and the Gun Control Act of 1968 because such devices allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger. Specifically, according to ATF, these devices convert an otherwise semiautomatic firearm into a machinegun by functioning as a self-acting or self-regulating mechanism that harnesses the recoil energy of the semiautomatic firearm in a manner that allows the trigger to reset and continue firing without additional physical manipulation of the trigger by the shooter. Hence, as stated in the final rule, a semi-automatic firearm to which a bump-stock-type device is attached is able to produce automatic fire with a single pull of the trigger. And the final rule states that, with limited exceptions, the Gun Control Act, as amended, makes it unlawful for any person to transfer or possess a machinegun unless it was lawfully possessed prior to the effective date of the statute. As stated by ATF, the bump-stock-type devices covered by this final rule were not in existence prior to the effective date of the statute, and therefore will be prohibited when this rule becomes effective. Consequently, under the final rule, current possessors of these devices will be required to destroy the devices or abandon them at an ATF office prior to the effective date of the rule.

Enclosed is our assessment of ATF's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Julia C. Matta
Managing Associate General Counsel

Enclosure

cc: Andrew Lange
Division Chief, Office of Regulatory Affairs
Bureau of Alcohol, Tobacco, Firearms, and Explosives
Department of Justice

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF JUSTICE,
BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES
ENTITLED
“BUMP-STOCK-TYPE DEVICES”
(RIN: 1140-AA52)

(i) Cost-benefit analysis

The Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) estimated the total undiscounted cost of the rule at \$312.1 million over 10 years. The total 7 percent discount cost is estimated at \$245.5 million, and the discounted costs would be \$32.8 million and \$35.0 million, annualized at 3 percent and 7 percent, respectively. The estimate included the costs to the public for loss of property (\$102.5 million); costs of foregone future production and sales (\$198.9 million); costs of disposal (\$9.4 million); and government costs (\$1.3 million). Unquantified costs included potential loss of wages for employees of bump-stock-type device manufacturers, notification to bump-stock-type device owners of the need to destroy the devices, and loss of future usage by the owners of the bump-stock-type devices. ATF did not calculate any cost savings for this final rule.

ATF stated that the final rule clarifies that bump-stock-type devices are machineguns that are subject to the National Firearms Act of 1934 (NFA), as amended, and the Gun Control Act of 1968 (GCA), as amended. ATF stated that the provisions of those statutes addressing machineguns are designed to increase public safety by, among other things, limiting legal access to them. ATF stated that, consistent with NFA and GCA, a desired outcome of this final rule is increased public safety.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

ATF performed a Final Regulatory Flexibility Analysis of the impacts on small businesses and other entities from the final rule. Based on the information from this analysis, ATF found that it is estimated that the remaining manufacturer will go out of business; there are 2,281 retailers, of which most are estimated to be small; and there are no relevant government entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. §§ 1532-1535

ATF determined that the rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of the \$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 UMRA.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551*et seq.*

On March 29, 2018, ATF published a notice of proposed rulemaking (NPRM). 83 Fed. Reg. 13,442. In response to the proposed rule, ATF received over 186,000 comments. According to ATF, 119,264 comments received expressed support for the proposed rule, 66,182 comments expressed opposition, and for 657 comments the commenter's position could not be determined. The final rule includes the regulatory changes proposed in the NPRM, ATF's summary of the public comments it received regarding those changes, and ATF's responses to those comments.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

ATF determined that the final rule does not impose any new reporting or recordkeeping requirements.

Statutory authorization for the rule

According to ATF, the authority citation for 27 C.F.R. part 447 continues to read as 22 U.S.C. § 2778; Executive Order 13,637; and 78 Fed. Reg. 16,129 (Mar. 8, 2013). The authority citation for 27 C.F.R. part 478 continues to read as 5 U.S.C. § 552(a); 18 U.S.C. §§ 921-931; and 44 U.S.C. § 3504(h). The authority citation for 27 C.F.R. part 479 continues to read as 26 U.S.C. §§ 5812, 5822, 7801, 7805.

Executive Order No. 12,866 (Regulatory Planning and Review)

ATF determined that the rule was a significant regulatory action under the Order. ATF stated that the Office of Management and Budget reviewed the rule.

Executive Order No. 13,132 (Federalism)

ATF stated that the rule does not have a substantial direct effect on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, according to ATF, the regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.