



President  
Mark W. Pennak

February 28, 2018

## **WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO SB 707 AND HB 888**

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of the District of Columbia. I recently retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland Firearms Law, federal firearms law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License (“HQL”) and a certified NRA instructor in rifle, pistol and personal protection in the home and outside the home as well as a range safety officer. I appear today in OPPOSITION to SB 707 and HB 888.

SB 707 and HB 888 would amend a MD Code, Criminal Law 4-301 to add a new definition for “rapid fire trigger activators.” The bills define a rapid fire activator as “any device, part, or combination of devices or parts that is designed and functions to accelerate the rate of fire of a firearm beyond the standard rate of fire for firearms that are not equipped with that device, part, or combination of devices or parts.” The bills would then add a new section to the Criminal Code, Section 4-305.1 to ban such “rapid fire trigger activators” from being transported into Maryland and further ban the manufacture, possession, sale, offer to sell, transfer, purchase or receipt of such a “rapid fire trigger activator.” A violation of any these provisions would be punishable under Section 4-306 of the Criminal Law article with 3 years in prison or a fine up to \$5,000. Use of a “rapid fire activator” in the commission of a felony or crime of violence would be punishable by a mandatory 5 years imprisonment for the first offense and 10 to 20 years imprisonment for each subsequent offense.

Stated briefly, these bills are hopelessly ambiguous in their application while being hopelessly ineffective. Specifically, the term “rapid fire activator” is simply a term unknown in the firearms community. The definition provided in the bill is vague. On its face, the definition is not even limited to a semi-automatic firearm, but would include \*all\* firearms, such as a pump action shotgun or bolt action hunting rifle or a revolver. Yet, “bump stocks” simply do not exist for non-semiautomatic firearms. It is thus senseless to include these other types of firearms in these bills. Moreover, the definition in the bills includes “any device” or “part” that would “accelerate” the “standard rate of fire.” This language could

be construed by a zealous prosecutor to include a replacement trigger for an existing, perfectly legal rifle, as such a modification could conceivably “accelerate the rate of fire” by some small amount over the trigger that came with the gun. Any such “device” or “part” could also easily include a worn part replacement that might, as incidental matter, allow a gun to be fire slightly more quickly. Such modifications or repairs cannot remotely approach the extreme rate of fire made possible by a true “bump stock,” such as used in Las Vegas. Yet, with its all-encompassing overreach, the bills’ language could criminalize such innocent gun owners. Importantly, these bills create a possession offense without any grandfather clause, so the bills would apply to all prior purchases of such vague “devices” or “parts” covered by the bills, regardless of whether the devices were actually “bump stocks” and regardless of when such purchases took place in the past.

More fundamentally, the term “standard rate of fire” is nonsensical as conventional firearms (non-machine guns) simply do not have a “standard rate of fire.” The term is utterly foreign to any established nomenclature and is, itself, utterly undefined. For example, rate of fire of a clean bolt action rifle may well be different than the rate of fire that can be achieved by a dirty rifle. The rate of fire that could be sustained by an expert is undoubtedly higher than the rate of fire achievable by a novice. The term “beyond the standard rate of fire” is not even limited to any level of significance so even the slightest increase might come within this definition. The legislation could thus entrap innocent gun owners who simply work on their firearms without ever adding anything remotely like a “bump stock” used in Las Vegas.

Moreover, these bills contain no *mens rea* requirement. It is a strict criminal liability bill. It does not matter under these bills that possession of the vague “device” or “part” is knowing or intentional, actual or constructive. It does not matter that the owner did not know that possession of a “device” or “part” that he or she may have possessed for decades was made newly illegal and the possessor made subject to long imprisonment. Such legislation is highly disfavored in the law. See *Staples v. United States*, 511 U.S. 600, 605 (1994) (noting that “the requirement of some *mens rea* for a crime is firmly embedded” in common law). Compare *Chow v. State*, 393 Md. 431, 471, 903 A.2d 388, 412 (2006) (holding that the “knowingly” element as used in MD Code, Public Safety, § 5-144, “requires that a defendant ‘knows’ that the sale, rental, transfer, purchase, possession, or receipt of a regulated firearm of which they are a participant in is in a manner that is illegal and not a legal sale”). Implementation of a *mens rea* requirement varies with the context, but even a “knowing” requirement can be insufficient. As the Supreme Court has stated, “*requiring only that the defendant act knowingly ‘would fail to protect the innocent actor.’*” *Elonis v. United States*, 135 S.Ct. 2001, 2010 (2015) (citation omitted) (emphasis added). State law also strongly favors an appropriate *mens rea* requirement. See, e.g., *Garnett v. State*, 332 Md. 571, 577-78, 632 A.2d 797, 800 (1993) (“The requirement that an accused have acted with a culpable mental state is an axiom of criminal jurisprudence.”); *Lowery v. State*, 430 Md. 477, 498, 61 A.3d 794, 807 (2013) (same).

Innocent, law-abiding gun owners should not be criminalized by vague legislation for possessing an undefined “device” or “part” that he or she may have acquired long before the Las Vegas shooting. As the Maryland Court of Appeals has noted, the legislature has an “obligation to establish adequate guidelines for enforcement of the law” and that obligation is “the more important aspect of the vagueness doctrine.” *Aston v. Brown*, 339 Md. 70, 89, 660 A.2d 447, 456 (1995), quoting *Kolender v. Lawson*, 461 U.S. 352, 358 (1983). Sweeping, vague language violates this obligation. Other than the Las Vegas shooting, there have been no report that “bump stocks” had ever been used in any crime in Maryland or elsewhere, much less any other “device” or “part.” The use of sweeping, vague language in an effort to include all imaginable “devices” or “parts” that could accelerate the “standard rate of fire” needlessly and shamelessly criminalizes the law-abiding and is grossly inappropriate.

The bills are also grossly ineffective. In the Las Vegas Nevada shooting, the shooter meticulously planned a mass shooting and traveled over multiple states to prepare for this shooting; the Bureau of Alcohol, Tobacco, Firearms and Explosives (AFT) determined that the firearms found in his hotel room, along with more guns found in his homes, had been legally purchased in Nevada, California, Texas, and Utah. [https://en.wikipedia.org/wiki/2017\\_Las\\_Vegas\\_shooting](https://en.wikipedia.org/wiki/2017_Las_Vegas_shooting). Thus, if “bump stocks” are problem, it is a national problem, not a state problem. A person intent on such hideous crimes need only purchase a bump stock in a neighboring state. Nothing in these bills would or could stop such sales. The only measures that could be remotely effective against such a prospective shooter would be a nation-wide regulation imposed by the federal government. **That very effort is underway.** On December 26, 2017, the AFT published in the Federal Register a “Notice of Proposed Rulemaking that would interpret the statutory definition of “machinegun” in the National Firearms Act of 1934 and Gun Control Act of 1968 to clarify whether certain devices, commonly known as ‘bump fire’ stocks, fall within that definition.” See 82 Fed. Reg. 60929 (Dec. 26, 2017) (attached). The Notice period for comments closed on January 25, 2018. More recently, the press reports that President Trump “has directed his attorney general to propose changes that would ban bump fire stocks.” <https://www.cnn.com/2018/02/20/politics/donald-trump-bump-stocks/index.html>. Presumably, such federal regulations would be better crafted and more sensible than these bills.

Finally, these bills effect a Taking under the Takings Clause of the Fifth Amendment and the Takings Clause of Article III, § 40, of the Maryland Constitution. That provision of the Maryland Constitution provides that “[t]he General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, *being first paid or tendered to the party entitled to such compensation.*” (Emphasis added). Property under this provision is defined as “every interest or estate which the law regards of sufficient value for judicial recognition.” *Dodds v. Shamer*, 339 Md. 540, 548, 663 A.2d 1318, 1322 (1995). Similarly, the word “property” in the Takings Clause of the federal Constitution means “the group of rights inhering in [a] citizen's relation to [a] ... thing, *as the right to possess, use and dispose of it.*” *United States v. General Motors Corp.*, 323

U.S. 373, 378 (1945) (emphasis added). The Maryland Court of Appeals has likewise held that the State's Taking Clause is violated "[w]henver a property owner is deprived of the beneficial use of his property or restraints are imposed that materially affect the property's value, without legal process or compensation." *Serio v. Baltimore County*, 384 Md. 373, 399, 863 A.2d 952, 967 (2004) (collecting cases). And the Court has expressly applied this provision to the seizure of firearms owned by a newly prohibited person. *Id.* at 968 ("the retention of the firearms would appear to be a taking by the County"). These bills, if they became law, would require the State to pay for every "device" or "part" covered by the bills, including bump stocks currently owned. These bills contain no such payment authorization or appropriation. It has long been the rule that such takings by the General Assembly are unconstitutional without a "provision" for compensation "being first paid." *Steuart v. City of Baltimore*, 7 Md. 500 (1855). The State may not seize first and pay later.

If the General Assembly does not want to wait for the federal government to act, then there is a simple definition of "bump stocks" used by the Washington State Legislature recently to impose a ban on bump stocks without creating the legal nightmares associated with these bills. In that legislation, which has been passed by both houses of the Washington legislature, a "bump stock" is defined as "a butt stock designed to be attached to a semiautomatic firearm with the effect of increasing the rate of fire achievable with the semiautomatic firearm to that of a fully automatic firearm by using the energy from the recoil of the firearm to generate reciprocating action that facilitates repeated activation of the trigger." SB 5992, 5992 AMS ZEIG S4064.3 (adopted in the Washington Senate January 25, 2018). See [http://www.chronline.com/crime/washington-state-moves-closer-to-bump-stock-ban/article\\_cc76385a-1909-11e8-a2e2-3709f0046d10.html](http://www.chronline.com/crime/washington-state-moves-closer-to-bump-stock-ban/article_cc76385a-1909-11e8-a2e2-3709f0046d10.html) (noting House passage on Feb. 23, 2018, with a provision to compensate existing owners). This language is precise, describes in detail what it is regulating and is applicable, sensibly, to semiautomatic firearms, and not other types of guns. With this clarity, the General Assembly could avoid sweeping too far to criminalize part replacements and competition modifications that have nothing remotely to do with the perceived problem. The State will still have to pay for any seizures under the federal and State Takings Clauses, but the number and amount of such compensation will likely be less than that associated with illegalizing every "device" or "part."

For all these reasons, we urge an unfavorable report.

Sincerely,



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SB 5992 - S AMD 372  
By Senator Zeiger

ADOPTED 01/25/2018

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 9.41.010 and 2017 c 264 s 1 are each reenacted and  
4 amended to read as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

7 (1) "Antique firearm" means a firearm or replica of a firearm not  
8 designed or redesigned for using rim fire or conventional center fire  
9 ignition with fixed ammunition and manufactured in or before 1898,  
10 including any matchlock, flintlock, percussion cap, or similar type  
11 of ignition system and also any firearm using fixed ammunition  
12 manufactured in or before 1898, for which ammunition is no longer  
13 manufactured in the United States and is not readily available in the  
14 ordinary channels of commercial trade.

15 (2) "Barrel length" means the distance from the bolt face of a  
16 closed action down the length of the axis of the bore to the crown of  
17 the muzzle, or in the case of a barrel with attachments to the end of  
18 any legal device permanently attached to the end of the muzzle.

19 (3) "Bump-fire stock" means a butt stock designed to be attached  
20 to a semiautomatic firearm with the effect of increasing the rate of  
21 fire achievable with the semiautomatic firearm to that of a fully  
22 automatic firearm by using the energy from the recoil of the firearm  
23 to generate reciprocating action that facilitates repeated activation  
24 of the trigger.

25 (4) "Crime of violence" means:

26 (a) Any of the following felonies, as now existing or hereafter  
27 amended: Any felony defined under any law as a class A felony or an  
28 attempt to commit a class A felony, criminal solicitation of or  
29 criminal conspiracy to commit a class A felony, manslaughter in the  
30 first degree, manslaughter in the second degree, indecent liberties  
31 if committed by forcible compulsion, kidnapping in the second degree,  
32 arson in the second degree, assault in the second degree, assault of

3520). The collections of information in 21 CFR part 4, subpart B, regarding postmarketing safety reporting for combination products have been approved under OMB control number 0910-0834; the collections of information in part 803, regarding medical device reporting, have been approved under OMB control number 0910-0437; the collections of information in 21 CFR part 806, regarding corrections and removals, have been approved under OMB control number 0910-0359; the collections of information in 21 CFR part 807, subpart E, regarding premarket notification, have been approved under OMB control number 0910-0120; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910-0231; the collections of information in 21 CFR part 810, regarding medical device recall authority, have been approved under OMB control number 0910-0432; the collections of information in part 820, regarding quality system regulations, have been approved under OMB control number 0910-0073; the collections of information regarding the MedWatch: The Food and Drug Administration Medical Products Reporting Program have been approved under OMB control number 0910-0291; and the collections of information regarding the Adverse Event Program for Medical Devices (Medical Product Safety Network (MedSun)) have been approved under OMB control number 0910-0471.

## V. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Food and Drug Administration, "Medical Device Reporting—Alternative Summary Reporting (ASR) Program, Guidance for Industry," available at <https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm072102.pdf>.

2. Food and Drug Administration, Event Problem Codes, available at <https://www.fda.gov/medicaldevices/deviceregulationandguidance/postmarketrequirements/reportingadverseevents/mrdadverseeventcodes/default.htm>.

3. Food and Drug Administration, FDA Form 3500A, available at <https://www.fda.gov/downloads/aboutfda/reportsmanualsforms/forms/ucm048334.pdf>.

4. MDUFA IV Commitment Letter, available at <https://www.fda.gov/downloads/ForIndustry/UserFees/MedicalDeviceUserFee/UCM535548.pdf>.

5. Appendix A, "Case Examples of Summary Malfunction Reporting," available in Docket No. FDA-2017-N-6730.

6. Electronic Medical Device Reporting (eMDR), (manufacturers may obtain information on how to prepare and submit reports in an electronic format that FDA can process, review, and archive), available at: <http://www.fda.gov/ForIndustry/FDAeSubmitter/ucm107903.htm>.

Dated: December 19, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

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## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms, and Explosives

#### 27 CFR Parts 478 and 479

[Docket No. 2017R-22]

RIN 1140-AA52

#### Application of the Definition of Machinegun to "Bump Fire" Stocks and Other Similar Devices

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

**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** The Department of Justice anticipates issuing a Notice of Proposed Rulemaking (NPRM) that would interpret the statutory definition of "machinegun" in the National Firearms Act of 1934 and Gun Control Act of 1968 to clarify whether certain devices, commonly known as "bump fire" stocks, fall within that definition. Before doing so, the Department and ATF need to gather information and comments from the public and industry regarding the nature and scope of the market for these devices.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before January 25, 2018. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Standard Time on the last day of the comment period.

**ADDRESSES:** You may submit comments, identified by docket number (2017R-22), by any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>.

• *Fax:* (202) 648-9741.

• *Mail:* Vivian Chu, Mailstop 6N-518, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Ave. NE, Washington DC 20226. *ATTN:* 2017R-22.

*Instructions:* All submissions received must include the agency name and docket number for this advance notice of proposed rulemaking (ANRPM). All comments received will be posted without change to the Federal eRulemaking portal, <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" section of the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Vivian Chu, Office of Regulatory Affairs, Enforcement Programs Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Ave. NE, Washington DC 20226; telephone: (202) 648-7070.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Attorney General is responsible for enforcing the Gun Control Act of 1968 (GCA), as amended, 18 U.S.C. 921 *et seq.*, and the National Firearms Act of 1934 (NFA), as amended, 26 U.S.C. 5841 *et seq.*<sup>1</sup> The Attorney General has delegated the responsibility for administering and enforcing these laws to the Director of ATF subject to the direction of the Attorney General and the Deputy Attorney General. *See* 28 CFR 0.130. Regulations in 27 CFR parts 478 and 479 implement the GCA and NFA.

The NFA defines "machinegun" as any weapon which: "shoots, is designed to shoot, or can be readily restored to shoot automatically more than one shot, without manual reloading, by a single function of the trigger." The term also includes "the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any

<sup>1</sup> NFA provisions still refer to the "Secretary of the Treasury." However, the Homeland Security Act of 2002, Public Law 107-296 (2002), transferred the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(c)(1). Thus, this document refers to the Attorney General.

combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.” 26 U.S.C. 5845(b).

The GCA defines “machinegun” by reference to the NFA definition. The GCA regulates the transfer and possession of machineguns under 18 U.S.C. 922(o). Section 922(o) makes it unlawful for any person to possess a machinegun unless it was lawfully possessed prior to the effective date of the section or is under the authority of the federal government or a state.

Those engaged in the business of manufacturing, importing, or dealing in NFA firearms must be registered with the Attorney General. 26 U.S.C. 5801, 5802. When the NFA was enacted in 1934, only a handful of firearms qualified as machineguns, such as the Thompson submachine gun. Over time, however, as firearms technologies have advanced, manufacturers and the public have attempted to develop firearms, triggers, and other devices that permit shooters to use semiautomatic rifles to replicate automatic fire without converting these rifles into “machineguns” within the meaning of the statute. Consequently, questions have arisen about whether these types of devices should be classified as machineguns (or machinegun conversion devices) pursuant to section 5845(b). *See, e.g.*, Internal Revenue Ruling 55–528 (1955) (considering whether types of “Gatling Guns” constitute machineguns); ATF Ruling 2006–2 (examining a firearms accessory device that, when activated by a single pull of the trigger, initiated an automatic firing cycle that continued until release).

ATF has issued a number of private letters to individuals and manufacturers who voluntarily submitted such devices for classification under the NFA and GCA. In addition, ATF has promulgated a regulation that defines “machinegun.” *See* 28 CFR 478.11, but that regulation mirrors the statutory language of the NFA and GCA and provides no further interpretation.

## II. Las Vegas Music Festival Attack and Requests To Regulate Bump Stock-Type Devices

“Bump fire” stocks (bump stocks) are devices used with a semiautomatic firearm to increase the firearm’s cyclic firing rate to mimic nearly continuous automatic fire. Since 2008, ATF has issued a total of 10 private letters in which it classified various bump stock devices to be unregulated parts or accessories, and not machineguns or machinegun conversion devices as

defined in section 5845(b) of the NFA or section 921(a)(23) of the GCA.

On October 1, 2017, 58 people were killed and several hundred were wounded in Las Vegas, Nevada, by a shooter firing one or more AR-type rifles affixed with a particular bump stock device. In 2010, the manufacturer of this particular device had supplied ATF with a sample of the bump stock, and ATF had examined and classified it as an unregulated firearm part, not subject to either the GCA or NFA.

Following the Las Vegas shooting, a significant amount of public attention has been focused on bump stock-type devices. ATF has received correspondence from the general public and from members of both houses of Congress requesting that ATF re-examine its past classification decisions concerning bump stock devices to determine whether they should be classified as machineguns within the meaning of section 5845(b). This ANPRM is the initial step in a regulatory process to interpret the definition of machinegun to clarify whether certain bump stock devices fall within that definition. If, in a subsequent rulemaking, the definition of machinegun under section 5845(b) is interpreted to include certain bump stock devices, ATF would then have a basis to re-examine its prior classification and rulings. *See Encino Motorcars v. Navarro*, 136 S. Ct. 2117, 2125 (2016); *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009).

## III. Requests for Public Input

This ANPRM is intended to gather relevant information that is otherwise not readily available to ATF regarding the scope and nature of the market for bump stock type devices. Because ATF does not have the authority to regulate firearm parts and accessories, ATF does not know, with the exception of one well-known manufacturer, how many of the individuals or companies that received classification letters from ATF ever engaged in commercial production and distribution of these devices. Similarly, ATF does not know how many companies or individuals who did not submit bump stock type devices to ATF for voluntary classification determinations are now engaging or have previously been engaged in this business. Further, the individuals and companies who submitted bump stock type devices to ATF for voluntary classification determinations identified some specific target markets for such devices, such as individuals with disabilities, but ATF does not have any information about whether those markets or other markets ultimately

materialized for the devices. Consequently, ATF seeks the following information:

### Manufacturers

Are you, or have you been, involved in the manufacturing of bump stock devices? If so:

1. In what part(s) of the manufacturing process, are/were you involved?
2. In what calendar years are/were you involved in the manufacturing process?
3. What is the wholesale price of the bump stock devices produced by the manufacturing process with which you are involved?
4. In each calendar year in which you have operated, how many bump stock devices were produced by the manufacturing process with which you are/were involved? Of this number, how many devices were sold to (a) retailers/resellers, and (b) directly to consumers?
5. What were your approximate gross receipts for the sale of these bump stock devices in each calendar year (from 2014—present)?
6. For what use or uses have you marketed bump stock devices?
7. If ATF classified bump stock devices as “machineguns” under the Gun Control Act of 1968, as amended, and the National Firearms Act of 1934, as amended, what would you expect to be the impact on your gross receipts for calendar year 2018?
8. If ATF classified bump stock devices as “machineguns” under the Gun Control Act of 1968, as amended, and the National Firearms Act of 1934, as amended, what other economic impact would you expect (*e.g.*, storage, unsellable inventory)?

9. What costs do you expect to be associated with the disposition of existing bump stock device inventory?

10. If ATF classified bump stock devices as “machineguns” under the Gun Control Act of 1968, as amended, and the National Firearms Act of 1934, as amended, do you believe that there would be a viable (profitable) law-enforcement and/or military market for these devices? If so, please describe that market and your reasons for believing such a viable market exists.

### Retailers

Are you, or have you been, involved in the retail sale of bump stock devices? If so:

11. In what calendar years are/were you involved?
12. In each calendar year, how many bump stock devices did you sell?
13. In each calendar year, what was the average retail price of the bump stock devices you sold?

14. In each calendar year (from 2014—present) what were your approximate gross receipts derived from the retail sale of bump stock devices?

15. For what use or uses have you marketed bump stock devices?

16. In the 2018 calendar year, how many bump stock devices do you anticipate you will sell, assuming that such devices remain classified by ATF as an unregulated firearm part? What do you expect will be the average price at which those bump stock devices will be sold?

17. If ATF classified bump stock devices as “machineguns” under the Gun Control Act of 1968, as amended, and the National Firearms Act of 1934, as amended, what would you expect to be the impact on your costs/expenses, gross receipts for calendar year 2018?

18. If ATF classified bump stock devices as “machineguns” under the Gun Control Act of 1968, as amended, and the National Firearms Act of 1934, as amended, what other economic impact would you expect (e.g., storage, unsellable inventory)?

19. What costs do you expect to be associated with the disposition of existing bump stock device inventory?

20. If ATF classified bump stock devices as “machineguns” under the Gun Control Act of 1968, as amended, and the National Firearms Act of 1934, as amended, do you believe that there would be a viable (profitable) law-enforcement and/or military market for these devices? If so, please describe that market and your reasons for believing such a viable market exists.

#### Consumers

21. In your experience, where have you seen these devices for sale and which of these has been the most common outlet from which consumers have purchased these devices (e.g., brick and mortar retail stores; online vendors; gun shows or similar events; or private sales between individuals)?

22. Based on your experience or observations, what is (or has been) the price range for these devices?

23. For what purposes are the bump stock devices used or advertised?

#### IV. Statutory and Executive Order Review

This ANPRM has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), The Principles of Regulation, in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation, and in accordance with Executive Order 13771, “Reducing

Regulation and Controlling Regulatory Costs.”

The Department has determined that this ANPRM is a significant regulatory action under Executive Order 12866, section 3(f), and accordingly this ANPRM has been reviewed by the Office of Management and Budget. However, this action does not propose or impose any requirements. The ANPRM is being published to seek information from the public about the practical impacts of interpreting the statutory definition of “machinegun” such that certain bump stock type devices may fall under that definition.

Furthermore, the requirements of the Regulatory Flexibility Act (RFA) do not apply to this action because, at this stage, it is an ANPRM and not a “rule” as defined in 5 U.S.C. 601. Following review of the comments received in response to this ANPRM, if ATF proceeds with a notice or notices of proposed rulemaking regarding this matter, ATF will conduct all relevant analyses as required by statute or Executive Order.

#### V. Public Participation

##### A. Comments Sought

ATF requests comments on this ANPRM from all interested persons with information about the enumerated questions. ATF specifically requests comments on the questions listed above, on the costs or benefits of the proposal in this ANPRM, and on the appropriate methodology and data for calculating those costs and benefits. Each commenter or commenting party should include the identifying number of the specific question(s) to which it is responding. ATF does not expect commenters to respond to every question; please feel free to respond only to those questions you feel you are able to answer.

All comments must reference the docket number 2017R–22, be legible, and include the commenter’s complete first and last name and full mailing address. ATF will not consider, or respond to, comments that do not meet these requirements or comments containing profanity. In addition, if ATF cannot read your comment due to technical difficulties and cannot contact you for clarification, ATF may not be able to consider your comment.

ATF will take into account, as appropriate, the comments received on or before the closing date, and will give comments received after that date the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not acknowledge receipt of comments.

##### B. Confidentiality

ATF will make all comments meeting the requirements of this section available for public viewing at ATF and on the internet as part of the eRulemaking initiative, and subject to the Freedom of Information Act. ATF will not redact personal identifying information that appears within the comment and it will appear on the internet.

##### C. Proprietary or Confidential Business Information

A commenter may submit to ATF information identified as proprietary or confidential business information. The commenter shall place any portion of a comment that is proprietary or confidential business information under law on pages separate from the balance of the comment with each page prominently marked “PROPRIETARY OR CONFIDENTIAL BUSINESS INFORMATION” at the top of the page.

ATF will not make proprietary or confidential business information submitted in compliance with these instructions available when disclosing the comments that it received, but will disclose that the commenter provided proprietary or confidential business information that ATF is holding in a separate file to which the public does not have access. If ATF receives a request to examine or copy this information, it will treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). In addition, ATF will disclose such proprietary or confidential business information to the extent required by other legal process.

##### D. Submitting Comments

Submit comments in any of three ways (but do not submit the same comments multiple times or by more than one method).

- *Federal eRulemaking Portal:* We strongly recommend that you submit your comments to ATF via the Federal eRulemaking portal. Visit <http://www.regulations.gov> and follow the instructions for submitting comments. Comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that [regulations.gov](http://www.regulations.gov) provides after you have successfully uploaded your comment.

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section



of this document. Written comments must appear in minimum 12 point font size (.17 inches), include the commenter's complete first and last name and full mailing address, be signed, and may be of any length.

- *Facsimile*: Submit comments by facsimile transmission to (202) 648-9741. Faxed comments must (1) Be legible and appear in minimum 12-point font size (.17 inches); (2) Be on 8½" x 11" paper; and (3) Be signed and contain the commenter's complete first and last name and full mailing address.

#### Disclosure

Copies of this advance notice, and the comments received will be available at <http://www.regulations.gov> (search for Docket No. 2017R-22) and for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E-063, 99 New York Avenue NE, Washington, DC 20226; telephone: (202) 648-8740.

#### List of Subjects

##### 27 CFR Part 478

Administrative practice and procedure, Arms and munitions, Customs duties and inspection, Exports, Imports, Intergovernmental relations, Law enforcement officers, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

##### 27 CFR Part 479

Administrative practice and procedure, Arms and munitions, Excise taxes, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, and Transportation.

#### Authority and Issuance

This document is issued under the authority of 5 U.S.C. 552(a); 18 U.S.C. 921 *et seq.*; 26 U.S.C. 5841 *et seq.*

Dated: December 19, 2017.

**Thomas E. Brandon,**

*Deputy Director.*

[FR Doc. 2017-27898 Filed 12-21-17; 4:15 pm]

**BILLING CODE 4410-FY-P**

## DEPARTMENT OF JUSTICE

### 28 CFR Parts 35 and 36

[CRT Docket No. 138]

RIN 1190-AA61; RIN 1190-AA62; RIN 1190-AA64; RIN 1190-AA65

#### Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions

**AGENCY:** Civil Rights Division, Department of Justice.

**ACTION:** Notice of withdrawal.

**SUMMARY:** The Department of Justice is announcing the withdrawal of four previously announced Advance Notices of Proposed Rulemaking (ANPRMs), pertaining to title II and title III of the Americans with Disabilities Act (ADA), for further review.

**DATES:** As of December 26, 2017, these four previously announced ANPRMs are formally withdrawn.

**ADDRESSES:** Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031-0885.

#### FOR FURTHER INFORMATION CONTACT:

Anne Raish, Acting Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307-0663 (voice or TTY) (not a toll-free number). Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514-0301 (voice), or (800) 514-0383 (TTY).

You may obtain copies of this document in an alternative format by calling the ADA Information Line at (800) 514-0301 (voice), or (800) 514-0383 (TTY).

**SUPPLEMENTARY INFORMATION:** The Department of Justice is formally announcing the withdrawal of four previously announced Advance Notices of Proposed Rulemaking (ANPRMs) pertaining to title II and title III of the Americans with Disabilities Act (ADA): (1) Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of Public Accommodations (RIN 1190-AA61); (2) Nondiscrimination on the Basis of Disability in State and Local Government Services; Next Generation 9-1-1 (RIN 1190-AA62); (3) Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture (RIN 1190-AA64); and (4) Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government (RIN 1190-AA65).

## Reasons for Withdrawal

### A. Accessibility of Web Information

On July 26, 2010, the Department published an ANPRM regarding the accessibility of Web information and services of state and local government entities (title II) and public accommodations (title III). 75 FR 43460. The Department subsequently bifurcated the rulemaking to deal separately with state and local government entities subject to title II (RIN 1190-AA65) and public accommodations subject to title III (RIN 1190-AA61), and proceeded first with the title II rulemaking. On May 9, 2016, the Department published a Supplemental Advance Notice of Proposed Rulemaking (SANPRM) regarding title II Web accessibility to seek additional public input regarding a wide range of issues pertaining to the accessibility of Web information and services of state and local governments. 81 FR 28658. The Department has not published any rulemaking document regarding title III Web accessibility since the 2010 ANPRM.

The Department is evaluating whether promulgating regulations about the accessibility of Web information and services is necessary and appropriate. Such an evaluation will be informed by additional review of data and further analysis. The Department will continue to assess whether specific technical standards are necessary and appropriate to assist covered entities with complying with the ADA. Accordingly, the Department is withdrawing the two previously announced ANPRMs related to the accessibility of Web information and services, "Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations" (RIN 1190-AA61) (75 FR 43460), and "Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government" (RIN 1190-AA65) (81 FR 28658).

### B. Accessibility of Equipment and Furniture

The Department initiated a review of accessibility of equipment and furniture on July 26, 2010, with the publication of an ANPRM to consider possible changes to requirements under titles II and III of the ADA to ensure that non-fixed equipment and furniture provided by covered entities are accessible to individuals with disabilities. 75 FR 43452. While some types of fixed equipment and furniture are explicitly covered by the ADA Standards for Accessible Design, *see, e.g.*, 28 CFR