PART XI:
Firearm Laws, Regulations, and Policy

Overview

As with any industry, the firearm industry is affected by legislation, court decisions, regulations, and government policies. Unlike other commodities, however, the U.S. Constitution directly references a guarantee of rights applicable to firearms in the Second Amendment. The overlay of direct constitutional considerations influences essentially all governmental action and policies involving firearms. This section reviews some of the most significant legal and regulatory developments since 2000, and how these developments correlate with trends in firearm commerce.

U.S. Supreme Court Opinions

Since 2000, the most significant legal development involving firearms has undoubtedly been the issuance of two landmark U.S. Supreme Court decisions, ***District of Columbia et al. v. Heller***, (554 U.S. 570, 2008) and ***McDonald v. City of Chicago****, (554 U.S. 570, 2010).* These cases collectively established that the Second Amendment includes an individual right to possess firearms and that the individual right is incorporated in the Fourteenth Amendment, and therefore also constrained states laws.

Issued in June 2008, the *Heller* decision invalidated a 39-year-old District of Columbia ordinance that banned the possession of handguns. The Court held that the ban was unconstitutional because the Second Amendment included an "individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." In reaching this holding, however, the Court emphasized that the individual right to possess firearms was subject to limitations: "The Court's opinion should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms".

The *McDonald* case involved a challenge to a Chicago city ordinance similar to the DC law the Court invalidated in *Heller.* In a decision issued in 2010, the Court held that the Chicago ordinance was also unconstitutional because the Due Process Clause of the Fourteenth Amendment incorporated the Second Amendment right recognized in *Heller* of individuals to "keep and bear arms," and therefore is enforceable against the states.

By resolving long-existing uncertainty as to whether the Second and Fourteenth Amendments included an individual right to possess firearms, the *Heller* and *McDonald* decisions provided greater clarity to state legislatures and local governments considering laws involving firearm possession. Continuing a trend that pre-dated these decisions, many state and local governments elected to enact laws either expanding the availability of permits for the concealed carrying of firearms or allowing both the open and concealed carrying of firearms without a permit.

As discussed later in this section, the proliferation of laws specifically allowing public possession of firearms correlates to a shift in U.S. firearm manufacturing from predominately long guns towards the manufacture of carry-friendly pistols.

Federal Law

Sunset of the Federal Assault Weapon and Large Capacity Magazine Ban

For a period of approximately four years in the time frame covered by this report (2000 to 2004), a provision of the GCA, Title 18 U.S.C. § 922(v), broadly restricted the manufacture and possession of firearms designated to be "assault weapons." Originally enacted as part of the Violent Crime Control and Law Enforcement Act of 1994, § 922(v) defined "assault weapons" to be firearms with the following design features:

- Semi-automatic rifles able to accept detachable magazines that also included two or more of the following features: folding or telescoping stock, pistol grip, bayonet mount, flash hider or threaded barrel designed to accept one, or grenade launcher.

- Semi-automatic pistols with detachable magazines and two or more of the following: magazine that attaches outside the pistol grip, threaded barrel to attach barrel extender, flash suppressor, handgrip, suppressor, Barrel shroud safety feature that prevents burns to the operator, a manufactured weight of 50 ounces (1.41kg) or more when the pistol is unloaded, or a semi-automatic version of a fully automatic firearm.

- Semi-automatic shotguns with two or more of the following features: folding or telescoping stock, pistol grip, a fixed magazine capacity in excess of five rounds, or detachable magazine

Commonly known as the "Federal Assault Weapon and Large Capacity Magazine Ban," § 922(v) contained a ten-year "sunset" provision under which the restrictions would expire if not renewed by Congress. On September 13, 2004, the sunset provision took effect when Congress chose not to renew that statute. Following this expiration, manufacture of the types of semi-automatic rifles and pistols previously designated to be assault weapons steadily increased, particularly AR-type rifles and pistols, which are now commonly referred to as "modern sporting rifles" and "modern sporting pistols."

Protection of Lawful Commerce in Arms Act (2005)[95]

Enacted in 2005, the Protection of Lawful Commerce in Arms Act (PLCAA) prohibits the civil lawsuits against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended. This statute in effect immunizes firearm manufacturers and retailers from civil litigation stemming from the criminal misuse of their products. The Act provides an exception that allows the filing of civil lawsuits based upon alleged violations of state consumer protection laws.

Concealed Carry Firearm Permitting: National Park Concealed Carry Authorization

Enacted in 2009, the Credit Card Accountability Responsibility and Disclosure Act included provisions that allow the concealed carry of firearms in national parks. The statute provides that any person who may lawfully carry a concealed firearm in the state where a national park is located may also possess, carry, and transport a concealed, loaded, and operable firearm within that national park.

State and Local Laws and Regulations

Concealed Carry Firearm Permitting: May Issue vs. Shall Issue

Beginning in and around 2001, several state and local governments began to modify concealed carry firearm permitting (CCFP) requirements from "may issue" to "shall issue". "May issue" systems provide discretion to the state or local issuing authority to deny a permit for a variety of reasons. "Shall issue" systems mandate the issuance of the permit if the applicant is not prohibited from possessing firearms. Michigan, Alaska, Minnesota, Colorado, Missouri, New Mexico, Ohio, Kansas, and Nebraska were among the first states to move to "shall issue" systems. As of 2022, forty-three and the District of Columbia have adopted "shall issue" CCFP systems[96] (inclusive of permit-less carry states), while seven states retain "may issue" CCFP systems[97].

A lawsuit pending in the U.S. Supreme Court, *New York State Rifle & Pistol Association, Inc., et al., Petitioners v. Kevin P. Bruen, in His Official Capacity as Superintendent of New York State Police, et al.* (No. 20-843), challenges the state of New York's "may issue" CCFP system. The New York statute requires applicants to provide "proper cause" to the New York State Police to obtain a CCFP; plaintiffs allege that the "proper cause" standard violates the Second Amendment. A ruling from the Court is anticipated during calendar year 2022.

Permit-less Concealed Firearm Carry

Following the issuance of the *Heller* decision, several states enacted statutes allowing the concealed carrying of firearms without a permit, often referred to as "constitutional carry" states. These permit-less concealed firearm carry laws allow any person lawfully allowed to possess a firearm to also carry that firearm in a concealed manner. As of the writing of this report 23 states have enacted similar statutes[98]. These changes in state laws continue the expansion of concealed firearm carry abilities first from "may issue" to "shall issue" and then to an automatic right to carry a concealed firearm for non-prohibited persons.

Concealed Carry Firearm Permitting: Reciprocal Agreements and Non-Residents

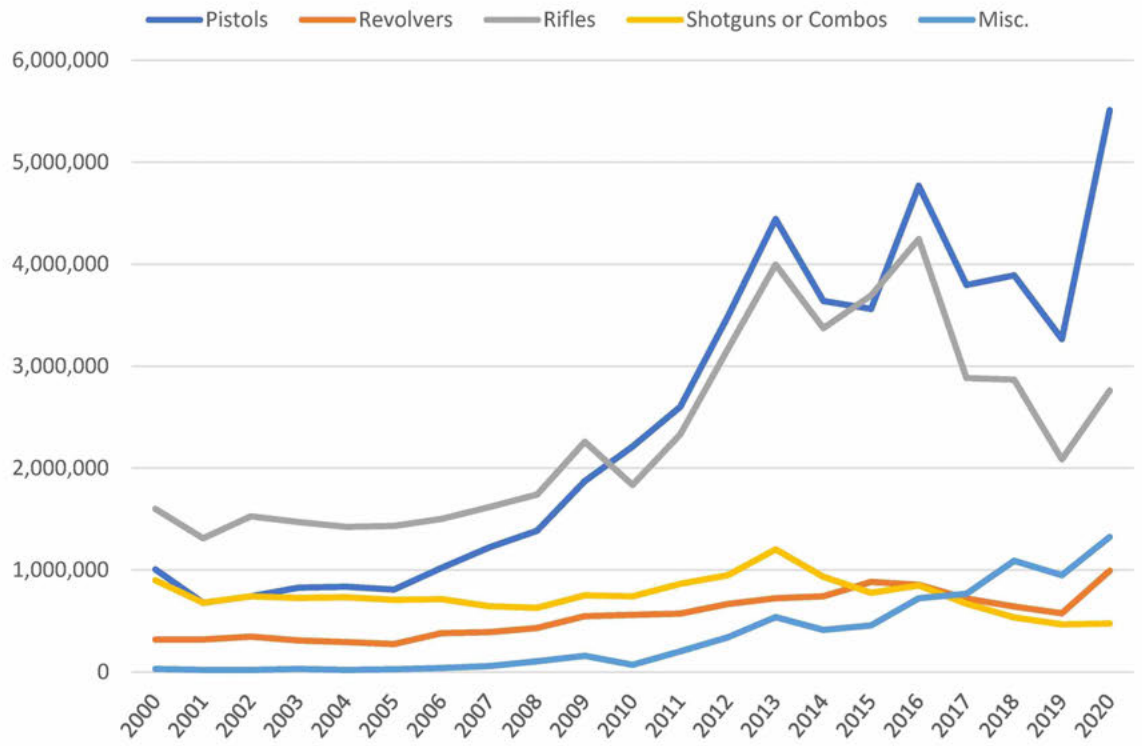
Since 2001, many state governments have entered reciprocal agreements to honor each other's CCFPs. Under these agreements, a resident of State A who possesses a State A-issued CCFP is also entitled to conceal carry a firearm in State B and vice versa. As of 2022, 43 states have enacted partial or full reciprocity with at least one other state. Indiana, Virginia, and Ohio unilaterally recognize all other state CCFPs while Kansas, Michigan, and North Dakota have reciprocity with 39 other states.

In addition to reciprocal CCFP agreements, many states have also enacted statutes allowing non-residents to receive a CCFP. Non-resident CCFP statutes are primarily designed to accommodate members of the U.S. military and immediate family members stationed in the host state, persons with a regular place of

business in the host state, persons who own property in the host state, persons from neighboring states, and persons from states with reciprocity agreements. Currently 22 states have enacted non-resident CCFP statutes.

Collectively, the U.S. Supreme Court decisions in *Heller* and *McDonald*, combined with enactment of state CCFP and open-carry statutes that expanded opportunity for lawful carrying of handguns, and the extension of reciprocity for concealed carry in national parks correlate to the growth in the manufacture of concealable carry-friendly pistols over long guns. From 2000 through 2009, rifles were the dominant firearm type manufactured in the U.S. In 2010, however, pistols overtook rifles as the dominant firearm type manufactured in the U.S. That trend has continued and accelerated through 2020. Between 2010 and 2020, the number of pistols manufactured annually in the U.S. increased 149%. In 2000, the number of rifles manufactured was 59% more than pistols. By 2020, the number of pistols manufactured was nearly 100% more than rifles manufactured (See Figure LRP-01)

Figure LRP-01: Total Licensed Domestic GCA Firearm Manufacturing by Weapon Type, 2000 – 2020



See Table M-06 in Appendix M - Manufacturing for a breakout of specific numbers by weapon type and year.

Changes in State Law Regarding Silencers

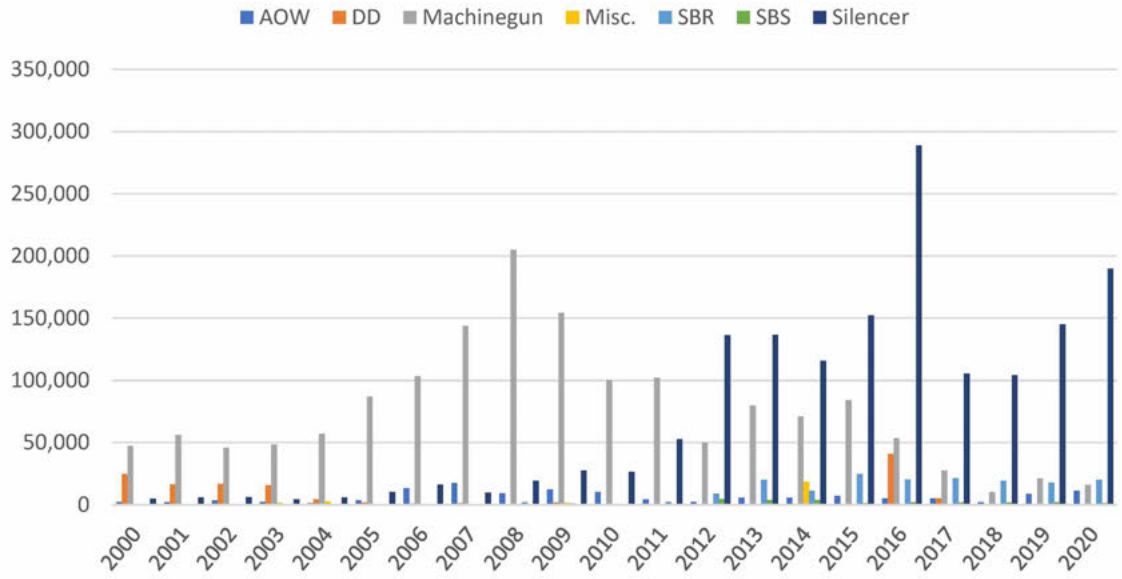
Silencers are defined in the GCA and NFA to be firearms and are therefore NFA weapons that may only be made or transferred after paying a making/transfer tax and registration in the NFRTR. The NFA prohibits approval of an application to make or transfer a silencer (or other NFA weapon) firearm if federal, state, or local law prohibits the making or possession of the firearm. Historically, many states prohibited the possession and use of silencers. Since 2011, however, the majority of states have enacted statutes that allow for the use of silencers in hunting. These laws are often referred to as Hearing

Protection Acts (HPAs). As of 2020, 40 states have enacted some form of HPA to legalize silencer use for hunting.[99] California, Delaware, Hawaii, Illinois, Massachusetts, New York, New Jersey, Rhode Island, and the District of Columbia do not allow silencer possession for any purpose. Connecticut and Vermont allow silencer possession, but not for hunting.

The passage of state level silencer laws since 2011 is associated with a substantial increase in silencer manufacturing as reflected in annual NFA manufacturing data. The trend of rising silencer manufacturing emerges in 2012 and continues through 2020 (See Figure LRP-02).

- Annual silencer manufacturing volume increased more than 613% between 2010 (26,637) and 2020 (189,987).
- In 2010, the 26,637 silencers manufactured constituted approximately 19% of the total 139,002 NFA weapons manufactured and distributed into domestic commerce that year.
- In 2020, the 189,987 silencers manufactured constituted nearly 80% of the total 238,917 NFA weapons manufactured and distributed into domestic commerce that year.

Figure LRP-02: Total Licensed Domestic NFA Weapon Manufacturing by Weapon Type, 2000 – 2020



See Table M-16 in Appendix M – Manufacturing for a breakout of specific numbers by weapon type and year.

State Laws Requiring Security at Gun Stores

Since 2000, several states have enacted statutes aimed at increasing the security of firearm dealer inventories. Eight states and the District of Columbia now have laws in place requiring FFLs to implement security practices that are not otherwise required by federal law. These states are California, Connecticut, Illinois, Massachusetts, Minnesota, New Jersey, Pennsylvania, and Rhode Island[100]. The requirements contained in these laws vary widely from state-to-state. Some requirements mandate the use of certain types of locks and alarm systems, the locking/securing of display firearms at the end of each

day, prohibition on displaying firearms in store front windows, and barriers to prevent smash and grab robberies. A follow-up ATF report will be published detailing FFL theft incidents which will include analysis of burglary, robbery, and larceny rates across all states and U.S. territories.

ATF Final Rules

Federal regulations are created through a process known as rulemaking. By law, federal agencies such as ATF must consult the public when creating, modifying, or deleting rules in the Code of Federal Regulations (CFR). The CFR is an annual publication that lists the official and complete text of federal agency regulations. If ATF determines that a regulation needs to be added, changed, or deleted, they publish a proposed rule in the Federal Register to ask the public for comments. ATF considers any public feedback, makes changes where appropriate, and may then publish a final rule in the Federal Register with a specific date for when the rule will become effective and enforceable. Since 2000, ATF has promulgated more than a dozen regulations involving the firearm industry through the issuance of final rules. One of these final rules, involving NFA trusts, had a temporary, but substantial effect on the volume of NFA applications received by ATF. A second final rule, involving devices known as bump stocks, clarified that those devices were machineguns that could not be lawfully made or possessed by non-governmental entities, thus essentially eliminating the market for that type of device. A third final rule, involving the regulatory definition of firearm frames and receivers and PMFs, updates firearm marking requirements, and thus is likely to have an effect on overall commerce in firearms.

ATF Final Rule 41(F) / 27 CFR 479: Gun Trusts and CLEO Certification

On January 15, 2016, the Attorney General signed ATF Final Rule 2016-41(f) (Final Rule 41(f)). The rule became effective on July 13, 2016. The purpose of Final Rule 41(f) was to ensure uniform application of the identification and background checks requirements for the making and receipt of NFA weapons among individuals, trusts, and legal entities.

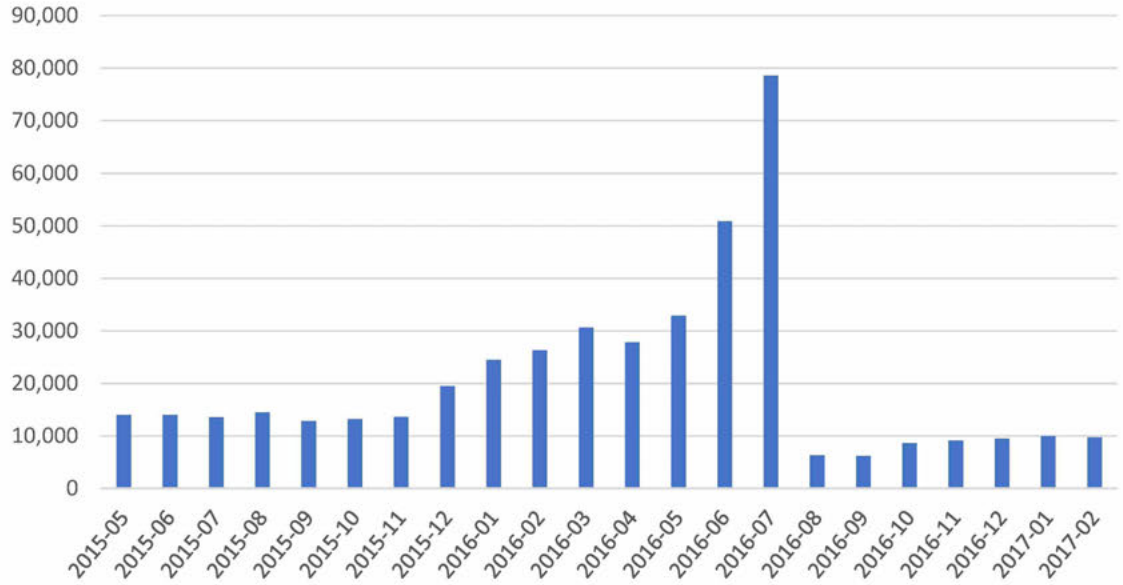
Final Rule 41(f) requires all individuals identified as a "responsible person" in a trust, corporation, partnership, association, or company to complete ATF Form 5320.23, *NFA Responsible Person Questionnaire*, and submit photographs and fingerprints when the trust or legal entity files an application to make an NFA weapon or is listed as the transferee on an application to transfer an NFA weapon. The rule defines "responsible person" as any individual who possesses, directly or indirectly, the power or authority to direct the management and polices of the trust or entity to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the trust or legal entity. Form 5320.23 includes a certification by each "responsible person" that all statements on the form and attached documents, are accurate and truthful. A copy of the form is provided to the chief law enforcement officer with jurisdiction over the applicant. Prior to promulgation of Final Rule 41(f), trusts and legal entities had not been required to complete the background check requirements applicable to individuals.

Final Rule 41(f) further requires that applicants that manufacture an NFA weapon (ATF Form 1) or receive (ATF Form 4 or 5) an NFA weapon in the name of a trust or other legal entity, must also complete ATF Form 5320.23 and submit photographs and fingerprint cards.

The anticipation of implementing these new requirements on July 13, 2016, was associated with a significant increase in NFA Form 1 and Form 4 applications between January 2016 through mid-July 2016. As reflected in Figure LRP-03, prior to this surge, the average volume of applications received was just over 14,400 applications a month[101]. That volume steadily increased and reached a peak of 78,614

applications received in July 2016, just prior to the effective date of the rule.

Figure LRP-03: Total NFA Form 1 and Form 4 Applications Received by Month/Year - May 2015 to February 2017[102]



See Table LRP-01 in Appendix LRP – Laws, Regulations, and Policy for a breakout of the total number of Form 1 and Form 4 applications received by month/year between May 2015 and February 2017.

ATF Final Rule 2018R-22F / 27 CFR Parts 447, 478, and 479: Bump-Stock-Type Devices

On December 18, 2018, the Attorney General signed ATF Final Rule 2018R-22F (Final Rule 22F), Bump-Stock-Type-Devices. The rule became effective on March 26, 2019. The purpose of Final Rule 22F was to clarify that bump stocks fall within the definition of "machinegun" under the NFA and GCA.

Bump stocks are devices that are affixed to firearms to cause them to rapidly fire by harnessing the firearm's recoil energy in a continuous back-and-forth cycle that allows the shooter to attain continuous firing after a single pull of the trigger, so long as the trigger finger remains stationary on the device.[103] Beginning in 2008, ATF issued a series of approximately 10 determinations which classified various bump stock-type devices to be unregulated parts or accessories, and not machineguns or machinegun conversion devices as defined in the GCA or NFA. ATF issued the last of these bump-stock-type classification letters in 2017. Each of these classification letters was issued privately to individuals and manufacturers who voluntarily submitted devices for review and classification by ATF. Some recipients of these letters chose to manufacture and sell to the general public proprietary models of the devices as unregulated firearm accessories. These classifications allowed for the unregulated production of bump stocks.

In December 2017, following the use of several bump stock devices in a highly publicized mass shooting, ATF and DOJ published a Notice of Proposed Rulemaking (NPRM) advising the public and industry that ATF was reevaluating its classification of bump stock-type devices and proposing an amendment of the

machinegun definition in the federal firearm regulations to clarify the bump-stock-type devices are machineguns.

More specifically, the amended regulation clarified that bump-stock-type devices—including ''bump fire'' stocks, slide-fire devices, and devices with certain similar characteristics—are ''machineguns'' as defined by the NFA and GCA because such devices allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger. As Final Rule 22F explained, 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, a semiautomatic firearm to which a bump-stock-type device is attached can produce automatic fire with a single pull of the trigger. With limited exceptions, the GCA, 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. The bump-stock-type devices covered by Final Rule 22F were not in existence prior to the effective date of the statute, and therefore, as of March 26, 2019, the effective date of the final rule, these devices are prohibited. Consequently, all possessors of these devices were legally obligated to destroy the devices or abandon them at an ATF office prior to the effective date of the rule.[104]

ATF Final Rule 2021R-05F: Definition of "Frame or Receiver" and Identification of Firearms

On April 11, 2022, the Attorney General signed ATF Final Rule 2021-05F. Final Rule 2021R-05F was published in the Federal Register on April 26, 2022, and it will take effect 120 days from this date, August 24, 2022. Final Rule 2021R-05F clarifies that "parts kits that are readily convertible to firearms are subject to the same regulations as traditional firearms. These regulatory updates will help curb the proliferation of "ghost guns," which are often assembled from kits, do not contain serial numbers, and are sold without background checks, making them difficult to trace and easy to acquire by criminals."[105] The Final Rule 2021R-05F updates the regulatory definition of "frame or receiver" in the GCA and NFA and amends the definition of:

- "firearm" to clarify when a firearm parts kit is considered a "firearm," and
- "gunsmith" to clarify the meaning of that term and to explain that gunsmiths may be licensed as dealers (without being a manufacturer) solely to mark firearms for unlicensed persons. It also includes those engaged in the business of identifying firearms for non-licensees, increasing access to professional marking services for PMFs.
- FFL dealers (in addition to FFL manufacturers and importers) may adjust or repair and return firearms, including PMFs, without taking them into inventory, if returned to the person from whom the firearm was received on the same day.
- Non-FFLs may mark PMFs for a licensee if done under the licensee's direct supervision.
- FFLs may adopt existing serial numbers, including adopting the unique identification number previously placed on a PMF by a non-licensee, under certain conditions.

Additionally, the Final Rule 2021R-05F provides definitions for: "complete weapon," "complete muffler or silencer device," "privately made firearm (PMF)," and "readily" for purposes of clarity given advancements in firearm technology.

Final Rule 2021R-05F also provides a definition of "importers or manufacturer's serial number"; provides a deadline for marking firearms manufactured; clarifies marking requirements for firearm mufflers and silencers; amends the format for records of manufacture/acquisition and disposition by manufacturers and importers; and amends the period that records must be retained at the licensed premises.

Final Rule 2021R-05F supersedes the following rulings: ATF Ruling 2009-1 (Firearms Manufacturing Activities—Camouflaging or Engraving Firearms); ATF Ruling 2009-5 (Firearms Manufacturing Activities, Identification Markings of Firearms); ATF Ruling 2010-10 (Manufacturing Operations May be Performed by Licensed Gunsmiths Under Certain Conditions); ATF Ruling 2011-1 (Importers Consolidated Records); ATF Ruling 2012-1 (Time Period for Marking Firearms Manufactured); ATF Ruling 2013-3 (Adopting Identification of Firearms); and ATF Ruling 2016-3 (Consolidation of Records Required for Manufacturers).

Final Rule 2021R-05F amplifies the following rulings: ATF Ruling 2002-6 (Identification of Firearms, Armor Piercing Ammunition, and Large Capacity Ammunition Feeding Devices); ATF Ruling 2016-1 (Requirements to Keep Firearms Records Electronically) and ATF Ruling 2016-2 (Electronic ATF Form 4473).

Final Rule 2021R-05F clarifies the following rulings and procedure: Revenue Ruling 55-342 (FFLs Assembling Firearms from Component Parts); ATF Ruling 77-1 (Gunsmithing at Shooting Events); ATF Ruling 2009-2 (Installation of Drop In Replacement Parts); ATF Ruling 2010-3 (Identification of Maxim Side-Plate Receivers); ATF Ruling 2015-1 (Manufacturing and Gunsmithing), and ATF Procedure 2020-1 (Recordkeeping Procedure for Non-Over-the-Counter Firearm Sales By Licensees to Unlicensed In-State Residents That Are NICS Exempt).

ATF Rulings

ATF publishes rulings to promote uniform understanding and application of the laws and regulations it administers, and to provide uniform methods for performing operations in compliance with the requirements of the law and regulations. Rulings represent ATF's guidance to the firearm industry as to the application of the law and regulations and apply retroactively unless otherwise indicated. Between 2000 and January 2022, ATF has published more than 30 firearm rulings.

ATF considers issuing a ruling when regulatory requirements need to be clarified; to address the application of regulatory requirements to specific circumstances to increase the safety and security of firearms in commerce; relieve industry members of any excessive burden; or to assist in the administrative process associated with regulating the affected industries. Examples of ATF rulings currently impacting the firearm industry include, electronic recordkeeping requirements, and clarification on manufacturing versus gunsmithing activities.

ATF rulings do not have the force and effect of regulations, and cannot amend or modify, or be contrary to, any existing statute or regulation. Before a ruling can be finalized, it must receive approval from DOJ. While rulings are not published in the Federal Register, all final approved rulings are published on www.atf.gov. Since 2000, ATF ruling 2015-1 addressed aspects of firearm licensing in a manner that may have resulted in previously unlicensed industry participants obtaining FFLs.

ATF Ruling 2015-1: Licensed Manufacturing Clarification

In January 2015, ATF issued Ruling 2015-1 which provided clarification to ATF Ruling 2010-10. Ruling 2015-1 declared any person (including any corporation or other legal entity) engaged in the business of performing machining, molding, casting, forging, printing (additive manufacturing) or other manufacturing process to create a firearm frame or receiver, or to make a frame or receiver suitable for use as part of a "weapon … which will or is designed to or may readily be converted to expel a projectile by the action of an explosive," i.e., a "firearm," must be licensed as a manufacturer under the Gun Control Act of 1968 (GCA); identify (mark) any such firearm; and maintain required manufacturer's records. A business (including an association or society) may not avoid the manufacturing license, marking, and recordkeeping requirements of the GCA by allowing persons to perform manufacturing processes on firearms (including frames or receivers) using machinery or equipment under its dominion and control where that business controls access to, and use of, such machinery or equipment. Ruling 2015-1 stated that only those persons engaged in the business of manufacturing had to place markings on any firearms manufactured. Final Rule 2021R-05F clarified Ruling 2015-1 by defining the term "gunsmith", which, in turn, clarified when a manufacturer's license is required. Specifically, the rule clarified that dealer-gunsmiths must be licensed as manufacturers when they perform work that produces new firearms for sale or distribution.

ATF Classifications

Firearm industry members often seek a determination from ATF as to the classification of a particular firearm, magazine, or firearm part, or whether a particular activity or recordkeeping method is compliant with the regulations. Through a classification request, industry members can request clarification as to whether a particular item is a firearm subject to regulation under the GCA or NFA. This process involves the requestor submitting the item or product to ATF for evaluation. After completing its review, ATF will generally issue a private classification letter to the requestor stating whether the item is a firearm subject to GCA or NFA regulation. Since 2000, ATF has issued classification letters regarding numerous submitted items. Portions of these classification letters often contain confidential, taxation, or proprietary information pertaining to the submitter. Many of these classification letters, such as the bump-stock letters described in the Final Rule section in some manner affected firearm commerce. In instances regarding "bump-stock-type devices" and firearms with attached "stabilizing braces" (also referred to as "arm braces"), ATF classification decisions have resulted in significant effects on commerce in those devices.

ATF "Stabilizing Brace" Classifications

"Stabilizing braces" or "arm braces" are devices designed for attachment to pistols with the purported purpose of allowing a shooter to support and hold-steady the pistol against the shooter's forearm to enhance accuracy. In 2012, ATF received the request to classify one of these devices; the classification request specified that the product was specifically intended to assist disabled veterans to stabilize large-frame pistols while shooting. Based on the specific features of the submitted prototype, in November 2012, ATF issued a letter[106] classifying the device as an accessory not subject to regulation under the GCA or NFA. Following the issuance of the November 2012 classification letters, ATF received several additional classification requests for a variety of other purported stabilizing braces with varying design features.

The issue involved in conducting classification assessments for purported stabilizing braces is whether the submitted device, when attached to a specific handgun platform, in fact serves as a traditional shoulder

stock, with the result that the pistol platform functions as a rifle (*i.e.*, fired with two-hands from the shoulder). If the device serves as a traditional shoulder stock when attached to the pistol platform for which it is designed, then the resulting configuration is most likely a SBR[107] which is subject to NFA taxes and must be registered in the NFRTR in accordance with Title 26 USC § 5841.

In an effort to provide information to the general public about the distinction between a firearm with an attached stabilizing brace and SBRs, in January 2015, ATF issued a public letter (known as an "open letter") advising that the firing of a stabilizing brace-equipped pistol from the shoulder (*i.e.*, using the brace as a shoulder stock) constituted a re-design of the pistol to function as an SBR (if the barrel length of the configured firearm is less than 16 inches.)[108] Following the issuance of this open letter, the number of SBR applications received by ATF substantially increased, from 71,024 in 2014 to 144,646 in 2016, an increase of approximately 104% (from 2014 to 2015 the increase was 25%; from 2015 to 2016 the increase was 63%) (See Table LRP-02).

On March 21, 2017, however, after receiving several requests to reconsider the January 2015 open letter, ATF issued a letter[109] to a firearm industry attorney essentially withdrawing the conclusion in that letter that firing of a stabilizing brace-equipped pistol constituted a redesign of the firearm to function as an SBR. The 2017 letter was publicly posted and widely circulated within the firearm and firearm accessory manufacturing industry. After the 2017 letter was circulated in the industry, the number of SBR applications received by ATF substantially decreased, from 144,646 in 2016 to less than 100,000 each year from 2017 to 2019, a decrease of more than 34% from the 2016 peak.

Between 2017 and 2020, new models of purported stabilizing braces proliferated[110]. In most instances, ATF had not reviewed or issued classification letters for the new variants and types of products brought to market.[111] On August 3, 2020, after evaluating a firearm being sold with a preconfigured device purporting to be a stabilizing brace, ATF determined that the firearm was an SBR and issued a cease-and-desist letter to the manufacturer, a licensed FFL.[112] The cease-and-desist letter was subsequently publicly posted by a private party. Once again, following publication of the ATF cease-and-desist letter, SBR applications significantly increased, from 95,224 in 2019 to 116,489 in 2020, an increase of approximately 22%.

Table LRP-02: Total Number of SBR Weapons, 2010 – 2020[113]

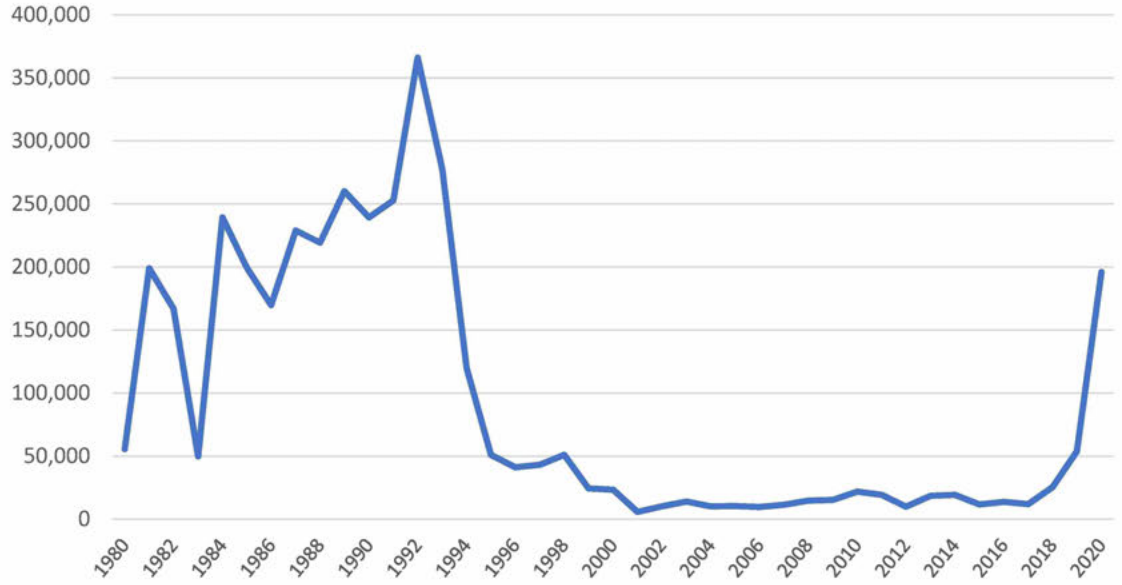
Year	# of SBR Weapons[114]
2010	28,135
2011	43,325
2012	54,953
2013	81,536
2014	71,024
2015	88,925
2016	144,646
2017	99,375
2018	99,505
2019	95,224
2020	116,489
Total	**923,137**

While there appears to be a relationship between the issuance of ATF letters and classifications and the fluctuations in the number of SBR registrations between 2010 and 2020, there are also state laws[115] regarding the possession of SBRs that could be contributing factors in these shifts. However, the impact of these state laws on national trends may be limited since their provisions would only apply to commerce within the affected states.

On December 18, 2020, in light of the proliferation of various designs and types of purported stabilizing braces, ATF posted for public comment proposed criteria to be applied in its classification of purported stabilizing braces to enhance transparency in the process. On directive of the then-acting Attorney General, ATF withdrew the proposed criteria on December 31, 2020. On June 10, 2021, ATF began the process of formally promulgating a regulation setting forth criteria for the assessment of purported stabilizing braces through the publication of an NPRM, *Factoring Criteria for Firearms with Attached Stabilizing Braces*.[116] In the NPRM, ATF estimated that more than 3 million devices sold as stabilizing braces have been manufactured. During the public comment period on the NPRM, which closed on September 8, 2021, ATF received more than 210,000 comments on the proposed rule. According to the Fall 2021 Unified Regulatory Agenda published by the Office of Management and Budget, Office of Information and Regulatory Affairs, DOJ anticipates issuing a final rule in August 2022.

The proliferation of devices purporting to be stabilizing braces also appears to have influenced the production of the types of pistols that are most often equipped with these devices, AR-type firearms. A review of annual GCA firearm manufacturing data by caliber, depicted in Figure LRP-04, shows a trend emerging in 2018 with a rise in pistol manufacturing for calibers between .22 and .25. This category includes calibers such as .223 and 5.56, the calibers used in many AR-type firearms.

Figure LRP-04: Total GCA Pistol Manufacturing Up to .25 Caliber, 1980 – 2020



As reflected in Figure LRP-04 and Table LRP-03 in Appendix LRP - Laws, Regulations, and Policy, there was a surge in the manufacturing of handguns up to .25 caliber between 1980 and 1995. The top 5 manufacturers of up to .25 caliber firearms in the peak manufacturing years of 1990 to 1993 were Raven Arms, Phoenix Arms, Bryco Arms, Lorcin Engineering Co, and Beretta. These companies made small .25 caliber semi-automatic pistols.

A steep drop in the manufacture of up to .25 caliber pistols takes place between 1992 and 1995. From 1996 to 2017, the manufacturing of up to .25 caliber pistols remains consistently low. Then in 2018, the manufacturing of up to .25 caliber firearms begins to surge again.

From 2018 to 2020, the top manufacturers of up to .25 caliber firearms were Stag Arms, Troy Industries

Inc., Lead Star Inc., Bearman Industries LLC, and American Defense Manufacturing LLC. All of these manufacturers, with the exception of Bearman Industries LLC, are manufacturers of .223 and 5.56 caliber AR-type pistols that have been sold with purported stabilizing braces pre-affixed.