



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, DC 20207

**Memorandum**

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TO : Michael S. Solender, General Counsel

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SUBJECT : Commission Jurisdiction over Separate Firearm Trigger Locks

1. Introduction

This memorandum addresses the issue of whether the Consumer Product Safety Act, as amended, 15 U.S.C. §§ 2051, *et seq.* (CPSA), provides the Commission with jurisdiction over separate firearm trigger locking devices. Such devices are placed around the trigger and trigger guard of a firearm to prevent it from being fired unless the locking device is removed. This analysis has been undertaken because a company recently approached the Commission requesting a Fast-Track recall of a separate firearm trigger lock product.

The CPSA gives the Commission authority to, *inter alia*, conduct research and investigations on, issue safety standards for, and, to initiate recalls of “consumer products.” A consumer product is defined in § 3 of the CPSA as “... any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise...” 15 U.S.C. § 2052(a)(1)(i).

However, § 3(a)(1)(ii)(E) of the CPSA excludes from the definition of “consumer product” “... any article, which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954...., or any component of any such article,...” 15 U.S.C. § 2052(a)(1)(ii)(E) (*emphasis added*). Section 4181 of the Internal Revenue Code of 1954, as amended, imposes a federal excise tax on “pistols,” “revolvers,” “firearms,” “shells” and “cartridges.” 26 U.S.C. § 4181. Thus, if a separate firearm trigger lock is determined to be one of these taxable “articles” or a “component” of one of these taxable articles, then the Commission would lack jurisdiction over it.<sup>1</sup>

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<sup>1</sup> In some circumstances, under the regulations implementing the § 4181 taxing authority, certain otherwise taxable “components” of taxable “pistols,” “revolvers,” and “firearms” are not in themselves taxable. Thus, although unnecessary in the context of this memorandum, an argument could be made that if a “component” of an item subject to the § 4181 tax were not in itself subject to the tax, then the Commission would have jurisdiction over that nontaxable component.

Administration of the taxing provisions of 26 U.S.C. § 4181 is the responsibility of the Bureau of Alcohol, Tobacco and Firearms (BATF) within the Department of the Treasury.<sup>2</sup> Treasury Order No. 120-03. 55 Fed. Reg. 47,422 (Nov. 13, 1990). Thus, since a reviewing court would likely turn to the BATF regulations specifying what items are subject to the § 4181 tax, and what are “components” of such items, and give them considerable deference in any judicial challenge to Commission jurisdiction, this analysis examines those regulations for resolution of the separate trigger lock jurisdiction question.

## 2. Conclusion

Analysis of the BATF regulations leads to the conclusion that the Commission has jurisdiction over separate firearm trigger locks. This conclusion is consistent with verbal advice previously provided by the Office of the General Counsel.

## 3. Analysis

### a. The BATF Regulations

Section 4181 of 26 U.S.C. does not include definitions of the terms “pistol,” “revolver,” or “firearm.” The BATF implementing regulations fill in this gap. 27 C.F.R. Part 53 (1999). Firearms are defined therein as:

Any portable weapons, such as rifles, carbines, machine guns, shotguns, or fowling pieces, from which a shot, bullet, or other projectile may be discharged by an explosive.

27 C.F.R. § 53.11 (1999).

“Pistols” and “revolvers” are similarly defined, with an emphasis on the capability to discharge a projectile via use of an explosive. *Id.*

The BATF regulations specifically exclude from the scope of the tax “... parts or accessories of firearms, pistols, revolvers, shells, and cartridges when sold separately or when sold with a complete firearm for use as spare parts or accessories. 27 C.F.R. § 53.61(b) (1) (1999)(*emphasis added*). However, the regulation goes on to state as follows:

The tax does attach, however, to sales of completed firearms, pistols, revolvers, shells, and cartridges, and to sale of such articles that, although in knock-down condition, are complete as to all component parts.

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<sup>2</sup> Before January 1, 1991, administration of the § 4181 taxing authority was the responsibility of the Internal Revenue Service (IRS) within the Department of the Treasury. Thus, a prior judicial decision concerning the IRS implementing regulations will also be discussed herein for the sake of completeness.

*Id.*

The BATF definition of “component parts” is then given.

*Component parts.* Component parts are items that would ordinarily be attached to a firearm during use and, in the ordinary course of trade, are packaged with the firearm at the time of sale by the manufacturer or importer. All component parts are includible in the price for which the article is sold. [That is, “component parts” are subject to the § 4181 excise tax.]

27 C.F.R. § 53.61(b)(2) (1999) (*emphasis added*).

If a separate firearm trigger lock were a nontaxable part or nontaxable accessory and not a “component” of a taxable article for purposes of § 4181, then the Commission would have jurisdiction over it under the CPSA.<sup>3</sup> Given that the BATF definition of “component part” specifically requires that the part be “ordinarily attached to the firearm during use” and that a separate firearm trigger lock must be removed from the weapon to use it, such a lock is not an “article” subject to the § 4181 tax or a “component” of such an article and is subject to Commission jurisdiction as a “consumer product.”

The BATF’s examples of “component parts” also support the conclusion that a separate firearm trigger lock is not a “component” of a taxable article.

Component parts include items such as a frame or receiver, breech mechanism, trigger mechanism, barrel, buttstock, forestock, handguard, grips, buttplate, fore end cap, trigger guard, sight or set of sights (iron or optical), sight mount or set of sight mounts, a choke, a flash hider, a muzzle brake, a magazine, a set of sling swivels, and/or attachable ramrod for muzzle loading firearms when provided by the manufacturer or importer for use with the firearm in the ordinary course of commercial trade. Component parts also include any part provided with the firearm that would affect the tax status of the firearm, such as an attachable shoulder stock.

27 C.F.R. § 53.61(b)(5)(ii) (1999).

These items must be present and assembled for the weapon to be complete and to be capable of operating in accordance with the definition of “pistol,” “revolver,” or “firearm” at § 53.11 of the BATF regulations. The purpose of a separate trigger locking device is to prevent operation of the pistol, revolver, or firearm and it must be removed to operate the weapon.

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<sup>3</sup> This memorandum does not address the question of Commission jurisdiction over a trigger lock designed integrally to the firearm itself.

Further support for the conclusion that a separate firearm trigger locking device is not a component of an article subject to the § 4181 tax is provided by the BATF's list of examples of nontaxable accessories.

Nontaxable accessories include items such as cleaning equipment, slings, slip on recoil pads (in addition to standard buttplate), tools, gun cases for storage or transportation, separate items such as knives, belt buckles, or medallions. Nontaxable accessories also include optional items purchased by the customer at the time of retail sale that do not change the tax classification of the firearm, such as telescopic sights and mounts, recoil pads, slings, sling swivels, chokes, and flash hiders/muzzle brakes of a type not provided by the manufacturer or importer in the ordinary course of commercial trade.

27 C.F.R. § 53.61(b)(5)(iv) (1999) (*emphasis added*).

The presence or absence of a separate firearm trigger lock does not change the tax classification of a firearm, e.g., from a “firearm” at a § 4181 tax rate of 11 percent to a “pistol” at the § 4181 tax rate of 10 percent. Furthermore, such a device is either purchased with a firearm as an accessory or purchased separately as an optional item.

b. Prior litigation/development of current BATF regulations

The prior IRS regulations defining those weapons and components subject to the § 4181 excise tax that were superseded by the BATF regulations were the subject of litigation in the case of Auto-Ordnance Corp. v. U.S., 822 F.2d 1566 (Fed. Cir. 1987). The Auto-Ordnance court reversed the underlying Claims Court decision and held that that the adjustable rear sight, front sight, and recoil compensator of the firearm in question were all readily removable “accessories” not subject to the excise tax. After experiencing difficulty in applying the “of secondary or subordinate importance” test enunciated by the Auto-Ordnance court, the BATF in 1996 proposed the current version of the regulations discussed above. 61 Fed. Reg. 45,377-8 (Aug. 29, 1996). In so doing, the BATF stated that “[t]he effect of the proposals will be to replace the readily removable/essential to the function test of the *Auto-Ordnance* case with a more objective, predictable standard to use in determining whether items sold with a firearm are includible in the tax basis.” *Id.* at 45,377.

In responding to comments on the proposal arguing that it would overturn the Auto-Ordnance case, the BATF opined in the preamble to the final rule that:

[T]he Federal Circuit rejected the IRS “commercial completeness” test only because that test was not clear in the regulations. The court did not hold that the IRS position was an impermissible interpretation of the statute. Accordingly, ATF does not believe the *Auto-Ordnance* case precludes the ATF from establishing a

[test for taxation] of parts and accessories different from that used by the court.

63 Fed. Reg. 52,602 (Oct. 1, 1998).

The BATF proceeded to promulgate the regulations analyzed in this memorandum, which that Agency characterized as incorporating the “commercial completeness” test. 63 Fed. Reg. 52,603 (Oct. 1, 1998).

As discussed above, separate firearm trigger locking devices are outside the current BATF regulatory definition of articles subject to the § 4181 excise tax or component parts thereof and are within the scope of the accompanying definition of nontaxable accessories. Accordingly, whether or not the BATF regulatory response to the Auto-Ordinance decision expanded the scope of the definition of components of weapons subject to the § 4181 excise tax, the conclusion that the CPSA provides the Commission with jurisdiction over separate firearm trigger locking devices is not altered.