



GUN OWNERS OF AMERICA

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May 15, 2018

Ms. Vivian Chu
Mailstop 6N-518
Office of Regulatory Affairs
Enforcement Programs Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
United States Department of Justice
99 New York Avenue NE
Washington, D.C. 20226

Re: Gun Owners of America Comments on Bureau of Alcohol, Tobacco, Firearms,
and Explosives Notice of Proposed Rulemaking (“NPR”) in
Docket No. 2017R-22; 83 *Federal Register* 13442 (March 29, 2018)

Dear Ms. Chu:

I am the Chairman of Gun Owners of America, one of the nation’s largest, oldest, and most vocal gun rights groups in the country, with over 1.5 million members and supporters. Gun Owners of America steadfastly remains what former Congressman Ron Paul repeatedly called it — “the only no-compromise gun lobby in Washington.”

I am writing in opposition to the recent regulations that the Bureau of Alcohol, Tobacco, Firearms and Explosives has proposed.¹ These regulations will infringe the Second Amendment rights of Americans — the very same Americans who elected the current President based on his promises that he would defend those rights. Respectfully, we want to emphasize there is no legal authority to ban so-called “bump stocks” or “bump-fire stocks” by decree. An executive ban of bump stocks, by classifying them as machineguns, would utterly contradict the plain text of the federal statute regulating machineguns, even as the Obama administration repeatedly conceded.

Neither the ATF nor the Department of Justice has ever believed there is executive authority to ban bump stocks. I implore this administration to respect the plain meaning of the Constitution, which states that the people’s right to keep and bear arms “shall not be infringed.”

¹ <https://www.gpo.gov/fdsys/pkg/FR-2018-03-29/pdf/2018-06292.pdf>.

Background

Several days after the mass school shooting in Parkland, Florida, the President's press office issued a memorandum to Attorney General Jeff Sessions directing the Department of Justice "to propose for notice and comment a rule banning all devices that turn legal weapons into machineguns."² Likewise, on February 26, 2018, the President announced during an interview: "[B]ump stocks — we're writing that out. I'm writing that out myself. I don't care if Congress does it or not. I'm writing it out myself, okay?"³ Of course, so-called "bump stocks" were not used in the Parkland shooting, but they reportedly were used in last year's October 1, 2017 Las Vegas shooting.

ATF has had an opportunity to evaluate bump stocks on numerous occasions — and yet, each time the agency has reviewed bump stocks, it has determined that — under the law — they are unregulated parts, completely **outside the scope of the agency's authority**. As the President's February memorandum recognized, even the Obama Administration — perhaps the most anti-gun presidency in history — previously determined that bump stocks do not "turn legal weapons into machineguns." Likewise, last year the *New York Times* reported that "private and public comments from Justice Department officials following the October shooting suggest there is little appetite within the agency to regulate bump stocks, regardless of pressure from the Trump administration."⁴ Finally, even anti-gun Senator Dianne Feinstein has recognized that the executive branch cannot regulate bump stocks by itself: "[t]here's no need for another review... current law does not allow the agency to ban or regulate bump-fire stocks." *Id.* There are very few thoughtful people who would argue that bump stocks are machineguns. I would like to explain why that is.

Under Applicable Law, Bump Stocks Clearly Are Not Machineguns

Federal law defines a 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**." 26 U.S.C. § 5845(b) (emphasis added). Given this clear statutory definition, ATF has never in five decades seen the need to promulgate regulations to elaborate or further explain this definition.

² [Memorandum](#) to Attorney General Jeff Sessions from President Trump (February 20, 2018).

³ A. Blake, "[Trump is talking about doing something that might be illegal — again,](#)" *The Washington Post* (Feb. 27, 2018).

⁴ A. Watkins, "[Despite Internal Review, Justice Department Officials Say Congress Needs to Act on Bump Stocks,](#)" *The New York Times* (Dec. 21, 2017).

A bump stock is not a machinegun, because it does not enable a firearm to fire more than **a single round** for each “**single function of the trigger.**” ATF has described a bump stock’s function as follows: “In order to use the installed device, the shooter must apply constant forward pressure with the non-shooting hand and constant rearward pressure with the shooting hand.”⁵ When this is accomplished, the rearward recoil of the firearm pushes the firearm (including its trigger) away from the firing hand, temporarily breaking the trigger finger’s contact with the trigger. However, the shooter’s simultaneous forward pressure by the support hand forces the firearm forward again, re-engaging the trigger with the trigger finger. Importantly, each time the weapon fires and recoils, the shooter’s finger is temporarily disengaged from the trigger, permitting the trigger to “reset,” and complete a “single function of the trigger.”

Under the statute, a firearm must also fire “**automatically**” in order to be a machinegun. The word “automatically,” according to the [National Firearms Act](#), means “more than one shot without manual reloading by a single function of the trigger.” In other words, with **one function of the trigger, an automatic firearm will continue to fire until the trigger is released, ammunition is depleted, or the firearm malfunctions.** Indeed, that is how a machinegun works. By applying a one-time, continual squeeze to the trigger, a machinegun will continue to fire, recoil, reset, and fire again. So long as the trigger is depressed, that continual operation is “automatic.” Not so with a bump fire stock — a bump stock-equipped firearm still fires one round with one function of the trigger. As ATF admits, “[t]he stock has no automatically functioning mechanical parts or springs and **performs no automatic mechanical function** when installed.” ATF June 7, 2010 letter (emphasis added).⁶ When a shooter is assisted by a bump fire stock — he simultaneously must apply opposing constant forward pressure and constant rearward pressure, in order to have his finger “pull” the trigger. However, mechanically and functionally the firearm is still a semi-automatic firearm, firing one round with one function of the trigger. There’s nothing “automatic” about that.

Finally, bump fire can be achieved without a bump stock. The rapid, semi-automatic “bump fire” permitted by a bump fire stock is nothing new — it has been around for decades — long before bump fire stocks were invented. A bump fire stock is simply a device to allow a person to “bump fire” a semi-automatic firearm more easily. If this administration arbitrarily classifies bump fire stocks as machineguns, consistency would require classifying every pair of Levi’s jeans as machineguns — on the theory that they have belt loops which can be used to enable bump firing.⁷ Indeed, ATF would also be required to classify human beings themselves as machineguns, since some shooters are able to bump fire their semi-automatic firearms using nothing more complicated than their trigger finger.⁸

⁵ See <http://www.vpc.org/wp-content/uploads/2017/10/ATF-bump-fire-letter-2010.pdf>.

⁶ <https://slidefire.com/files/BATFE.pdf>.

⁷ See <https://www.youtube.com/watch?v=ykfPIJjraPQ>.

⁸ See <https://www.youtube.com/watch?v=7RdAhTxyP64>.

But regarding bump stocks, these regulations would define them as “machineguns.” And, under the Hughes Amendment (18 U.S.C. 922(o)), every “machinegun” manufactured after May, 1986, is banned for civilian use with no grandfather clause or no grace period.

This means every bump stock owner immediately becomes a felon, subject to a \$250,000 fine and 10 years in prison.

How many bump stocks are there? 300,000? 500,000? No one really knows. But how many do you think are going to turn in their bump stocks before this regulation goes into effect? Make no mistake about it: Banning firearms without a grandfather clause is something that neither Lyndon Johnson nor Bill Clinton nor Barack Obama ever did. Clinton's semi-automatic ban -- as odious as it was -- didn't criminalize pre-existing semi-automatic owners.

These Regulations Threaten AR-15s and Other Semi-Automatic Rifles

But there's another problem: If the proposed regulations can erroneously deem AR-15/bump stock fire to be “automatic fire,” then a future anti-gun administration could easily deem AR-15s as full automatics under those circumstances.

As the president's public comments have noted, bump fire stocks may, in fact, permit semi-automatic firearms to “mimic” a rate of fire typically associated with machineguns. 82 *Fed. Reg.* at 60930. But that does not **make them** machineguns. Certainly, a bump fire stock enables a shooter to engage in rapid — but still semi-automatic — fire. Yet a high rate of fire alone does not transform a semi-automatic into an automatic weapon under the NFA. ATF's prior private letter rulings have reached the correct — and obvious — conclusion: “[a] ‘bump-stock’ is a firearm part and is not regulated as a firearm under [the] Gun Control Act or the National Firearms Act.”⁹

If this administration outlaws bump stocks, without regard for the limitations on ATF authority under federal law, it will put into place a slippery slope for future, anti-gun presidents. If ATF chooses to ignore the statutory definition of a machinegun, and instead creates a new definition based on anything that “increases the rate of fire” of a semi-automatic firearm, then far more is at risk than mere bump stocks.

These regulations are proposing a radical change — as they effectively define a gun as a machinegun even if the trigger resets for every round that is fired, so long as the finger only pulls the trigger once. The regulations state on p. 13457 of the Federal Register from March 29, that the term “automatically” is being amended to include a “mechanism that allows the firing of

⁹ See <https://slidefire.com/files/BATFE.pdf>. Even some of the most anti-gun members of Congress apparently agree that current law does not regulate bump fire stocks, as they have introduced legislation to do just that. See also H.R. 4168, <https://www.congress.gov/bill/115th-congress/house-bill/4168/text>.

multiple rounds through a single function of the trigger; and ‘single function of the trigger’ means a single pull of the trigger.”

So while bump stock devices will now be treated as machineguns under these regulations, these regs also threaten to do the same to AR-15s or other semi-automatic rifles, particularly in the next anti-gun administration.

There is no doubt that a future administration could use this regulation to ban AR-15s and other semi-automatic rifles. In the past, one had to fundamentally change the firing mechanism of a semi-automatic firearm to convert it into a fully automatic firearm. But now, according to these regulations, a bump stock is a machinegun — and it can “readily restore” a semi-auto into a machinegun, simply because the gun owner can effectively fire the weapon continuously with a “single pull” of the trigger. According to these proposed regulations, this satisfies the legal definition of a rifle that is classified as a machinegun (26 USC 5845(b)). It won’t matter that a gun which is being bump fired has not been fundamentally altered.

I don’t believe that President Trump wants to ban every semi-automatic rifle in America. But under an anti-gun Democrat administration, they could be on the brink of extinction because of these regulations.

ATF Has No Generalized Authority to Regulate Firearms or Accessories, Outside the Specific Language of the Statute

Federal law is intentionally structured so that it does NOT give generalized authority to the ATF or to anyone else to regulate firearms and accessories. Rather, it prohibits certain acts and gives ATF (and, on occasion, other agencies) the jurisdiction to enforce those prohibitions.

6 U.S.C. 531 gives ATF the power to (1) investigate “criminal and regulatory violations of the federal firearms ... laws”, (2) investigate “violent crime or domestic terrorism,” as defined in 18 U.S.C., (3) carry out some of the discrete functions it exercised in the Department of the Treasury, and (4) carry out those functions vested in the Attorney General by statute and delegated to ATF. Thus, ATF’s jurisdiction is defined by federal statutory provisions.

Similarly, with few exceptions, each of the subsections in the core of federal firearms law (18 U.S.C. 922) begins with the words “It shall be unlawful” and then proceeds to proscribe a specific discrete act. Thus, unlike other agencies, ATF does not have open-ended regulatory authority.

This is intentional. By way of contrast, the Consumer Product Safety Commission (CPSC) has authority to ban certain unsafe products, or require they be modified to make them safer. If ATF had similar authority to ban or regulate firearms, parts and accessories, it could use that authority to ban any or all firearms. Clearly, this would not be an acceptable outcome under the Second Amendment.

Therefore, since ATF does not have the authority to classify a “bump stock” as a machinegun, it does not have the authority to regulate “bump stocks” at all. Any other result would be a concession that ATF has the inherent authority to regulate or ban large categories of firearms — or all firearms.

Conclusion

Gun Owners of America has not and never will accept the premise — adopted by anti-gun federal judges — that Second Amendment rights can be infringed, so long as the government has a sufficiently important or compelling reason for doing so. Rather, the Second Amendment sets forth its own standard of review: “shall not be infringed.” It is clear that bump stocks cannot be regulated under the law, and may not be regulated without infringing the Second Amendment rights of Americans.

During President Trump’s 2016 campaign, he promised that he would be a champion of Second Amendment rights. After the 2016 Pulse Nightclub shooting in Florida, he wisely recognized that “if you had one person in that room that could carry a gun and knew how to use it, it wouldn’t have happened, or certainly to the extent that it did.”¹⁰ In his campaign platform, he correctly acknowledged that “bans are a total failure. That’s been proven every time it’s been tried. ... Law-abiding people should be allowed to own the firearm of their choice. The government has no business dictating what types of firearms good, honest people are allowed to own.”¹¹ And, in 2017, he promised that “an ‘eight-year assault’ on gun ownership rights had come to a ‘crashing end’ ...”¹²

Unfortunately, it now appears that — under this administration — gun owners’ rights are under a greater threat than at any time in recent history. Gun owners were called paranoid for thinking President Obama was coming for their guns — yet the ATF has now announced that **our federal government quite literally will be coming for people’s guns.**

Not only for the bump stocks which are in possession of 300,000 to 500,000 gun owners, but potentially, for the owners of certain semi-automatic rifles, as well. As mentioned above, under 26 U.S.C. 5845(b), any firearm that can be “readily restored” or “converted” to fire automatically IS a “machinegun.” Period. End of story.

And, as with bump stocks, there would be no grace period or grandfather clause for post-1986 semi-automatic rifles. This means that the implementation of his proposed regulations would turn between 500,000 and 20,000,000 law-abiding gun owners into immediate felons.

¹⁰ L. Qiu, “[President Trump’s Contradictory, and Sometimes False, Comments About Gun Policy to Lawmakers](#),” *The New York Times* (Feb. 28, 2018).

¹¹ https://assets.donaldjtrump.com/Second_Amendment_Rights.pdf.

¹² K. Liptak, “[Trump: ‘8-year assault’ on Second Amendment is over](#),” CNN (Apr. 28, 2017).

For all these reasons, I would urge this administration -- and the ATF -- to reconsider and reverse itself in order to bury these proposed regulations.

Sincerely,

A handwritten signature in blue ink that reads "Tim Macy". The signature is written in a cursive style with a large, stylized "M".

Tim Macy
Chairman