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May 9, 2018

By electronic submission

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 Foundation 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 Sirs:

These comments are filed on behalf of our client, Gun Owners Foundation (“GOF”). GOF is a nonprofit, educational, and legal defense organization, defending the Second Amendment to the United States Constitution and encouraging governmental compliance with the rule of law in the administration of federal and state firearm regulations. Incorporated in Virginia in 1983, GOF is exempt from federal income tax under Internal Revenue Code Section 501(c)(3). GOF is headquartered in northern Virginia.

GOF filed comments¹ on January 18, 2018, in response to the Bureau of Alcohol, Tobacco, Firearms, and Explosives’ (“ATF”) Advance Notice of Proposed Rulemaking (“ANPRM”)² with respect to whether “bump fire” stocks fall within the statutory definition of a “machinegun.”

¹ <http://lawandfreedom.com/wordpress/wp-content/uploads/2018/01/GOF-Comments-on-Bump-Fire-Stocks.pdf>.

² <https://www.gpo.gov/fdsys/pkg/FR-2017-12-26/pdf/2017-27898.pdf>.

In response to the above-referenced March 2018 request,³ GOF submits these comments in response to ATF's notice of proposed rulemaking ("NPRM") on interpreting the statutory definition of "machinegun" to clarify whether "bump fire" stocks fall within that definition.

I. Background.

As far back as 2006, ATF correctly realized that bump fire — *i.e.*, rapid, semiautomatic fire — is not automatic fire. In ATF Ruling 2006-2, ATF classified (albeit improperly⁴) the Akins Accelerator as a machinegun, based on the theory that the device **used a spring** (note that a spring is not present in a modern bump stock) to harness recoil energy of a firearm and repeatedly rebound the trigger forward and contact a shooter's trigger finger. However, in a June 26, 2008 letter⁵, ATF concluded that, without the spring, the Akins Accelerator was not a machinegun, because "[t]he absence of an accelerator spring in the submitted device prevents the device from operating automatically...." ATF recognized that "the shooter pulls the receiver assembly forward to fire each shot, each shot being fired by a single function of the trigger."

Subsequent to its ruling on the Akins Accelerator, ATF states that it has issued at least "ten letter rulings between 2008 and 2017 conclud[ing] that bump-stock-type devices ... do not fire 'automatically.'"⁶ NPRM at 13445. In a June 7, 2010 letter⁷, ATF noted that a

³ <https://www.gpo.gov/fdsys/pkg/FR-2018-03-29/pdf/2018-06292.pdf>.

⁴ Ignored by ATF was the fact that, like a bump stock, the Akins Accelerator required constant forward pressure on the firearm — input by a human being — in order to function.

⁵ <http://www.vpc.org/wp-content/uploads/2017/10/Trigger-Activator-Akins-ATF-Approval-2008.pdf>.

⁶ ATF always has asserted that it does not need to disclose its so-called "private letter rulings" to the public, on the theory that they were issued only to the recipient. Typically, these letters become available only if the recipients choose to publish them. However, in the NPRM, ATF references at least 10 letter rulings from 2008-2017, each finding that bump stocks are not machineguns. (In an apparent *faux faux* contrary to decades of agency policy, the NPRM even publicly names two of the recipients — Michael Smith and David Compton. NPRM at 13445.)

There is clearly a vital public interest in being able to see all the available evidence about bump stocks — most especially, ATF's legal reasoning behind its repeated decisions that it has no authority to regulate them. Therefore, **ATF should make publicly available all of its letter rulings relating to bump stocks**, redacting only personal information.

⁷ <http://www.vpc.org/wp-content/uploads/2017/10/ATF-bump-fire-letter-2010.pdf>.

bump stock “has no automatically functioning mechanical parts or springs and performs no automatic mechanical function when installed.” In an April 2, 2012 letter, ATF explained that “[c]ontinued intermediate pressure applied to the fore-end ... push[es] the receiver assembly forward until the trigger re-contacts the shooter’s stationary firing hand finger, allowing a subsequent shot to be fired. In this manner, the shooter pulls the firearm forward to fire each shot, the firing of each shot being accomplished by a single trigger function.” In an April 16, 2013 letter⁸, ATF noted that bump stocks “require[] ... continuous multiple inputs by the user for each successive shot,” and thus “ATF does not have the authority to restrict their lawful possession, use, or transfer.”

ATF has had at least 15 years to properly classify bump stocks, a time period spanning three presidential administrations. It has examined numerous different devices, sending classification letters to individuals, industry members, and even to a member of Congress. ATF’s letters have been signed by top-level ATF employees, including two Assistant Directors and two Firearms Technology Branch⁹ chiefs. Each time, ATF has properly concluded that bump stocks do not operate “automatically,” and that they fire a single shot with a single “function” (or even “single pull”) of the trigger.

Now, suddenly, in apparent response to political pressure from President Trump, ATF purports to revoke all of its past determinations, somehow now concluding that bump stocks have been machineguns all along. ATF now repeatedly claims that its prior “decisions did not include extensive legal analysis” and “that conclusion does not reflect the best interpretation of the term ‘machinegun’” — as if simply saying it makes it true. *See* NPRM at 13443, 13447. ATF’s current machinations are as politically motivated as they are blatantly wrong.

II. A Bump Fire Stock Does Not Function “Automatically.”

The word “automatic” means “a device or process[] working by itself with **little or no direct human control**.”¹⁰ Yet, as ATF correctly notes, for a bump fire stock to function properly, the shooter must maintain simultaneous “constant forward pressure” coupled “with constant rearward pressure” on the firearm (much like when shooting a bow and arrow), the proper combination of which allows “the recoil energy of the firearm” to rapidly “bump” the trigger against the trigger finger. NPRM at 13443. Without this critical element of **human control**, the rifle to which the bump stock is attached would, at best, fire a single round (*see*

⁸ https://perlmutter.house.gov/uploadedfiles/atf_response_04.16.13.pdf.

⁹ This was later renamed the “Firearms Technology Industry Services Branch,” and today is called the “Firearms and Ammunition Technology Division” (FATD).

¹⁰ <https://en.oxforddictionaries.com/definition/automatic>.

ATF letter of April 6, 2017¹¹), or may experience a malfunction. Thus, it is only with human input and intervention — applying simultaneous opposing forces — that the bump stock can function for rapid semiautomatic fire.

In other words, the shooter's arms act as a **human compression spring** (pushing forwards while pulling rearwards).¹² With an installed bump stock, the recoil energy of the firearm then “compresses” or “loads” the human spring (causing the trigger finger to momentarily release the trigger), until the human spring “rebounds” (causing the trigger finger to again contact the trigger).¹³ This is why a bump stock is helpful — but not at all necessary — for bump firing. The human being is the integral part of the bump fire system, the bump stock only makes it easier.

The mechanical differences between a genuine automatic firearm such as an M16, and a bump fired semiautomatic rifle such as an AR-15, are plain to see. An M16, for example, **harnesses only the recoil energy of the firearm** (the reciprocating bolt carrier group) to continually reset the trigger and release the hammer, firing additional rounds until the trigger is released. A bump fire stock, on the other hand, **must also harness human energy** — precise and opposing forces — in order to function as intended.

What's more, not only must a shooter apply opposing forces to the firearm, he must apply a **precise amount** of force. ATF's April 2, 2012 letter called this an “appropriate amount” of force, ATF's June 26, 2008 letter called it “intermediate pressure,” and ATF's April 6, 2017 letter twice noted that it was critical that “sufficient forward pressure” be applied. In other words, using a bump fire stock requires practice and skill to accomplish rapid, semiautomatic bump fire. To be sure, it may not require a large amount of practice or a high level of skill, but of course that is the entire purpose of the bump stock — to make a somewhat difficult technique somewhat easier. Either way, the point is that nothing about the operation of a bump stock is automatic, but rather use of a bump stock is a **learned technique**.

¹¹ <https://www.documentcloud.org/documents/4418662-ATF-Bump-Stock-Letter-April-6-2017.html>.

¹² This is why ATF in its June 26, 2008 letter noted that an Akins Accelerator would not permit automatic fire if its spring was removed, and the shooter instead functioned as a human spring.

¹³ Perhaps this is why some in the firearms community have jokingly called on ATF to register human beings as machineguns. See <https://www.facebook.com/militaryarms/videos/1837117376300053/>.

III. As Even ATF Has Admitted, a Bump Stock Does Not Fire Multiple Rounds With a “Single Function” of the Trigger — or Even a “Single Pull” of the Trigger.

The definition of machinegun requires that it fire multiple rounds “by a single function of the trigger.” 26 U.S.C. Section 5845(b). Over a decade ago, ATF adopted a nonsensical interpretation of the term “single function,” claiming it meant a “single pull” of the trigger.¹⁴ ATF ignored the fact that the word “function” clearly refers to **what the trigger is doing**, while the word “pull” refers to **what the shooter is doing**. This interpretation is contrary to ATF’s own earlier admission that the statute refers to an “**automatic mechanical function**” (ATF letter of June 7, 2010) — mechanical meaning “caused by, resulting from, or relating to a process that involves a purely physical as opposed to a chemical or biological change or process.”¹⁵

Properly understood, a “function” of the trigger unambiguously refers to (such as in the case of an AR-15) the mechanical process of the trigger — release of the hammer, re-engagement of the disconnector, and reset.¹⁶ It is indisputable that this semi-automatic process occurs **each time** the trigger is pulled, and each time a round is fired, during a “bump fire” cycle of fire.

However, as GOF pointed out in its prior comments, even going along with ATF’s sloppy interpretation and pretending that “single function” means “single pull,” a bump stock still would not fire automatically. The word “pull” means “to exert force upon” or “to use force in drawing, dragging, or tugging.”¹⁷ But when using a bump stock, the shooter does not “pull” the trigger — in fact, before starting a firing sequence, the **shooter is not even touching the trigger**. Rather, the shooter inserts his trigger finger through the trigger guard, and places it on the bump stock finger rest.¹⁸ The shooter then applies the appropriate amount

¹⁴ ATF used this “interpretation” in its case against the Akins Accelerator, convincing the U.S. Court of Appeals for the Ninth Circuit that “single function” meant “single pull.” *Akins v. United States*, 312 Fed. Appx. 197, 200 (11th Cir. 2009).

¹⁵ <https://www.merriam-webster.com/dictionary/mechanical>.

¹⁶ See <https://www.youtube.com/watch?v=xh2FjzVVIZY>. ATF previously has adopted a similar view of what constitutes a “single function” of a trigger. In a February 22, 2008 letter, ATF classified a “two-stage trigger device” as a machinegun because it permitted a “host rifle” to “fire a single shot when the trigger is ... pulled ... and another single shot when the trigger is ... released.”

¹⁷ <https://www.merriam-webster.com/dictionary/pull>.

¹⁸ See <https://slidefire.com/how-it-works/>; see also <http://www.slidefire.com/img/how-it-works/rest-trigger-finger.jpg>.

of forward pressure with the non-shooting hand, which causes the entire firearm (including the trigger) to slide forward, **briefly bringing the trigger finger into contact with the trigger**, and firing a single round. Immediately thereafter, the recoil of the firearm again **separates the trigger finger from the trigger**, allowing the trigger to reset. The process is then repeated, in rapid succession, until the shooter stops applying forward pressure.

Consistent with GOF's prior comments on the ANPRM, the NPRM now appears to **admit that the trigger finger does not continually pull the trigger**. In fact, ATF notes that a bump stock "permit[s] the trigger to lose contact with the finger and manually reset." NPRM at 13444. ATF then explains that "multiple rounds [are] fired when the shooter maintains **pressure on the extension ledge** of the device...." *Id.* at 13447 (emphasis added). ATF explains that a bump stock allows "continuous firing after a single pull of the trigger so long as the trigger finger remains stationary on the device's **extension ledge** (as designed)." *Id.* at 13443 (emphasis added).

But wait just a second. The "extension ledge" of a bump stock is not the "trigger" of a firearm, yet ATF glosses right over the obvious difference, pretending the two are equivalent.

In other words, ATF in 2008 rewrote the statute from "**single function of the trigger**" to "**single pull of the trigger**," and now apparently has abandoned even that limitation, in favor of a **single contact with the "extension ledge" on a bump stock**. ATF is now so far outside the bounds of logic and reason — not to mention the law — that it simply cannot be taken seriously. ATF appears to possess a limitless willingness to embrace whatever definition will fit its purposes at any given time.

IV. A Firearm Cannot Be Both Semiautomatic and Fully Automatic.

Perhaps realizing that firearms equipped with bump stocks are not, in fact, machineguns, ATF's NPRM minces words in an obvious effort to avoid the issue. For example, ATF claims that bump stocks "allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle...." NPRM at 13442. Though noting that a bump stock "allow[s] 'rapid fire' operation of the **semiautomatic** firearm," ATF soon after claims that a bump stock is the "primary impetus for **automatic** fire." Then, in the very next sentence, ATF flip flops again, correctly noting that bump stocks "increase the rate of fire of **semiautomatic** firearms...." *Id.* at 13443 (emphasis added). Later still, ATF makes the self-contradicting claim that bump stocks "enable a semiautomatic firearm to fire 'automatically.'" *Id.* at 13446. Of course, definitionally speaking, semiautomatics do not fire automatically — fully automatic firearms do.

V. ATF Has Failed to Respond to Arguments GOF Raised in its Prior Comments.

In its prior comments on the ANPRM filed January 18, 2018, GOF explained fully why bump stocks are not machineguns. *See* Gun Owners Foundation Comments of January 18, 2018.¹⁹ In its NPRM, however, ATF feebly attempts to address only some of those arguments, while ignoring others entirely. This is contrary to the axiomatic rule that “[a]n agency establishing a rule need not respond to every comment. It **must**, however, reasonably **respond to those comments that raise significant problems.**” North Carolina v. Federal Aviation Administration, 957 F.2d 1125, 1135 (4th Cir. 1992) (emphasis added).

For example, GOF noted that the definition of a machinegun requires a firearm to function “automatically,” and that the operation of a bump stock is anything but automatic — requiring human intervention in the form of the shooter maintaining precise opposing pressures on the firearm. *See* GOF Comments at 3. ATF has ignored this distinction, claiming only that **after** a shooter applies the appropriate forces, the bump stock “**then** harnesses the recoil energy of the firearm...” NPRM at 13443 (emphasis added). In that way, ATF claims that a bump stock “functions as a self-acting and self-regulating force,” again ignoring that the bump stock is harnessing not only recoil energy but also human energy. *Id.*

Focusing only on what happens **after** (the **appearance** of automatic fire), while deliberately ignoring what happens **before** (the harnessing of a precise amount of human energy in the form of simultaneously opposing forces), allows ATF to skirt the issue, pretending that bump stocks fire automatically.

Additionally, GOF’s comments noted ATF’s use of the word “mimics,” and explained that a device that “mimics” automatic fire is not **therefore** engaged in automatic fire. *See* GOF Comments at 3-4. Rather than responding to GOF’s point, ATF doubled down, claiming that bump stocks:

- “allow[] ‘rapid fire’ operation of the semiautomatic firearm” (NPRM at 13443);
- “increase the rate of fire of semiautomatic firearms” (*Id.*);
- “mimic automatic fire” (*Id.* at 13444);
- “increase the rate of fire of semiautomatic firearms” (*Id.*); and
- “operate to mimic automatic fire” (*Id.* at 13447).

¹⁹ <http://lawandfreedom.com/wordpress/wp-content/uploads/2018/01/GOF-Comments-on-Bump-Fire-Stocks.pdf>.

As one former ATF agent has claimed in an interview, “If it walks like [a] duck, quacks like a duck, it’s a duck...”²⁰ Such a silly claim might be considered “good enough for government work,” but it does not hold up to even cursory legal analysis. ATF cannot simply claim that bump stocks are machineguns because they permit rapid semiautomatic fire that gives the **appearance** of automatic fire.

ATF’s flawed theory boils down to the idea that bump stocks allow a shooter to “replicate automatic fire” or “mimic automatic fire.” NPRM at 13444. But while a home theater system playing the movie “Full Metal Jacket” might “replicate” or “mimic” automatic fire,²¹ an audio system is not a machinegun. Neither is a fully automatic air rifle.²² And neither is a bump stock, even if it enables semiautomatic fire at a rate ATF believes is similar to that of a machinegun.

VI. The NPRM Would Create A Dangerous Precedent.

ATF’s NPRM is based, at least in part, on the idea that bump stocks are machineguns because they “allow[] ‘rapid fire’ of the semiautomatic firearm,” “increase the rate of fire of semiautomatic firearms,” and “mimic automatic fire.” *Id.* at 13443, 13444. Were those criteria applied to other firearm accessories, ATF might just as easily conclude that they too are machineguns, having now departed entirely from the plain language of the statute.

For example, firearms instructor and trainer Travis Haley has demonstrated that the simple addition of a muzzle brake on a semiautomatic AK-47 rifle can increase “increase the rate of fire” over a naked muzzle from 270 rounds per minute to 390 rounds per minute.²³ Changing the trigger in an AR-15 to a Tac-Con 3MR AR-15 trigger allows famed shooter Jerry Miculek to fire at 460 rounds per minute.²⁴ Finally, it could even be said that a standard capacity magazine (often labeled “high capacity” magazines by antigun persons) could — even if only marginally — increase the rate of fire of a semiautomatic firearm when compared to using neutered, reduced capacity magazines.²⁵

²⁰ D. Freedman, “Ex-ATF official in an about-face says bureau’s approval of bump stocks was wrong,” *Times Union* (Feb. 23, 2018) <https://www.timesunion.com/7day-state/article/Ex-ATF-official-says-bureau-approval-of-bump-12703697.php>.

²¹ <https://www.youtube.com/watch?v=S06nIz4scvI>.

²² <https://www.youtube.com/watch?v=-ksIFQSh2n0>.

²³ <https://www.youtube.com/watch?v=LUBxO3jkJxc>.

²⁴ <https://www.youtube.com/watch?v=xXnFdS1sVDE>.

²⁵ <https://www.youtube.com/watch?v=MCSySuemiHU>.

The question then becomes, whether ATF seeks to establish a maximum “rate of fire” of a semiautomatic firearm. In ATF’s view, how fast is “too fast” so that a semiautomatic firearm is labeled a machinegun? However, the flaw in ATF’s position is that there is no “rate of fire” of a semi-automatic fire. The only question is how fast the shooter can cycle the trigger, the only limit being the mechanical speed at which the firearm can cycle. In other words, semiautomatic fire can be as slow or as fast as a shooter can cycle the trigger, and a bump stock just helps the shooter cycle it faster.

ATF claims that while bump stocks are machineguns, “[b]ump firing and other techniques for increasing the rate of fire to not satisfy this definition” because they allegedly do not use “an assistive device” such as a bump stock. NPRM at 13447. Of course, federal law does not use the term “assistive device,” and does not prohibit devices that assist a shooter in firing a semiautomatic firearm faster.

Apparently recognizing the necessary and absurd logical result of the reasoning in its NPRM, ATF makes the assertion that a bump stock is distinguishable from other bump fire techniques. NPRM at 13447. ATF claims that “individuals wishing to replicate the effects of bump-stock-type devices could also use rubber bands, belt loops, or otherwise train their trigger finger to fire more rapidly” without regulation. NPRM at 13454.

In reality, all bump fire devices and all bump fire techniques are mechanically and functionally identical. A bump stock permits a shooter to place his trigger finger in a **fixed position** on the stock, against which the trigger is rapidly “bumped.” Likewise, a person bump firing from the hip might hook his finger through the belt loop in his pants — again, to create a **fixed position** for his finger, against which the trigger can be bumped. Finally, even shooters who are able to bump fire their rifles from the shoulder position do so by carefully holding their finger stationary in midair — once again creating a **fixed position** against which to bump the trigger. The mechanics of bump fire are indistinguishable no matter the device or technique used, despite ATF’s machinations to the contrary.

As GOF and many other commenters have noted, gun owners have been bump firing their guns for decades using nothing more than their belt loop which, under ATF’s reasoning, would become a device that allows rapid fire “by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.” NPRM at 13448. Since there is no legal, logical, or mechanical difference between using a bump stock or a belt loop, if ATF chooses to plod ahead and ban bump stocks, it must go ahead and ban all blue jeans as well — or at least require that Americans “surrender them, destroy them, or otherwise render them permanently inoperable” by cutting off all the loops. *See* NPRM at 13442.

Finally, as GOF has previously noted,²⁶ if an AR-15 or AK-47 is capable of bump firing even without a bump stock, what is to stop a future ATF under a future administration from claiming that these semiautomatic weapons themselves are machineguns, on the theory that they are capable of semiautomatic fire that “mimics” fully automatic fire?

VII. Conclusion.

ATF has only the authority delegated to it by Congress through statute. President Trump’s ordering ATF to ban bump stocks by administrative fiat may place the agency in an uncomfortable position,²⁷ but it does grant ATF the authority to regulate bump stocks. The NPRM reflects a political decision, not a legal one, which is in clear conflict with both the law and with all prior ATF rulings on the subject, and therefore should be withdrawn.

Sincerely yours,



William J. Olson

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²⁶ <https://www.gunowners.org/release-go-a-statement-on-slide-fire-ceasing-orders-of-bump-stocks.htm>.

²⁷ S. Gurman, “Trump Wants to Ban Bump Stocks; ATF Doesn’t Know if It Can,” *U.S. News* (Feb. 22, 2018) <https://www.usnews.com/news/politics/articles/2018-02-22/trump-wants-to-ban-bump-stocks-atf-doesnt-know-if-it-can>.