

WILLIAM J. OLSON
(VA, D.C.)
JOHN S. MILES
(VA, D.C., MD OF COUNSEL)
HERBERT W. TITUS
(VA OF COUNSEL)
JEREMIAH L. MORGAN
(D.C., CA ONLY)
ROBERT J. OLSON
(D.C., VA)

WILLIAM J. OLSON, P.C.
ATTORNEYS AT LAW
370 MAPLE AVENUE WEST, SUITE 4
VIENNA, VIRGINIA 22180-5615
TELEPHONE (703) 356-5070
FAX (703) 356-5085
E-MAIL: wjo@mindspring.com
<http://www.lawandfreedom.com>

114 CREEKSIDE LANE
WINCHESTER, VA 22602-2429
TELEPHONE (540) 450-8777
FAX (540) 450-8771

January 18, 2018
By electronic submission

Ms. Vivian Chu
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: Comments of Gun Owners Foundation on Bureau of Alcohol, Tobacco,
Firearms, and Explosives Advance Notice of Proposed Rulemaking in Docket
No. 2017R-22; 82 *Federal Register* 60929 (December 26, 2017)

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.

In response to the above-referenced December 2017 request¹ by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”), GOF submits these comments on ATF’s advance notice of proposed rulemaking (“ANPRM”) on interpreting the statutory definition of “machinegun” to clarify whether “bump fire” stocks fall within that definition.

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. Given this clear statutory definition, ATF has never in five decades seen the need to promulgate any regulations further explaining this definition. Indeed, ATF has already ruled numerous times that bump fire stocks do not fall within the statutory definition of “machineguns.” Now, however, apparently

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

responding to political pressure in the wake of the recent Las Vegas shooting, ATF seeks to reconsider its position on bump fire stocks — perhaps in order to regulate yet another area in which it has no authority.

I. The Statute Forecloses Any Attempt by ATF to “Reclassify” Bump Fire Stocks as Machineguns.

A. Semi-Automatic Fire with a Bump Fire Stock Does Not Involve Either “Single Function of the Trigger” or a “Single Pull of the Trigger.”

The first important bit of language in the statute is “single function of the trigger.” Indeed, this is the language that ATF often refers to when classifying machineguns, seemingly ignoring the rest of the text. It seems abundantly clear that a “single function of the trigger” refers to the mechanical operation of the trigger itself (click to fire, click to reset). Remarkably, however, in 2009, ATF convinced the Eleventh Circuit that “single function of the trigger” instead means “single pull of the trigger” by the shooter, or the “single application of the trigger by a gunman” (*Akins v. United States*, 312 Fed. Appx. 197, 200 (11th Cir. 2009)) — as if the statutory term describing the mechanical operation of the firearm instead refers to the person doing the pulling rather than the trigger doing the functioning. Such an interpretation is nonsensical. However, even the Eleventh Circuit’s “single pull” and “single application” language does not empower the ATF to regulate bump fire stocks, because bump fire stocks do not function with a single trigger pull.

ATF’s ANPRM does not specify how a “bump fire stock” functions. However, in one of ATF’s private letter rulings issued June 7, 2010, ATF described the 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.”² 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.” Thus, even the “single pull” and “single application” language does not help ATF in the case of a bump fire stock, since bump fire is comprised not of a “single pull of the trigger,” but of a series of rapid, individual “pulls” of the trigger each time a round is fired. In no sense can one be described as “pulling” a trigger when he’s not even touching it.

² See <http://www.vpc.org/wp-content/uploads/2017/10/ATF-bump-fire-letter-2010.pdf>.

B. A Bump Fire Stock Does Not Function “Automatically,” But Rather Requires Continuous Human Involvement.

ATF typically gives short shrift to the statutory requirement that a firearm “shoot automatically” in order to be classified as a machinegun. However, that statutory requirement is distinct from “single function of the trigger,” and equally important. The word “automatically” means “by a device or process requiring no human intervention.” 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” — *i.e.*, it does not require a continuous action by a human being. If a machinegun’s trigger were locked back with a clamp, one could literally walk away, leaving the machinegun to keep firing until it malfunctioned or ran out of ammo.

Not so with a bump fire stock. 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). That statement alone would seem to put an end to this inquiry. Admittedly having “no automatic mechanical function,” how could ATF ever claim that a bump fire stock allows a firearm to “shoot automatically”? A bump fire stock is nothing more than a single, solid piece of plastic.

Rather, it is the shooter who achieves the rapid fire using a bump fire stock — he simultaneously must apply opposing constant forward pressure and constant rearward pressure, in order to have his finger repeatedly “pull” the trigger. There’s nothing “automatic” about that.

C. Semi-Automatic Bump Fire May “Mimic” or Resemble Fully Automatic Fire, But That Does Not Make It Automatic.

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 ATF 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.³ Of course, that might not be a far stretch for an agency that once classified a shoe string as a machinegun.⁴ However, ATF would also be

³ See <https://www.youtube.com/watch?v=wZCO-06qRgY>.

⁴ Letter from Chief of ATF Firearms Technology Branch to Brian Blakely (Sept. 8, 2004) <https://www.everydaynodaysoff.com/wp-content/uploads/2010/01/ATF-shoestring-machine-gun-2004.jpg>.

required to classify human beings themselves as machineguns, since some shooters are able to bump fire their semi-automatic firearms using nothing more than their trigger finger.⁵ One would hope that even ATF would not attempt to ban post-1986 human beings by administrative fiat.

As ATF is quick to point out, bump fire stocks permit semi-automatic firearms to “mimic” the type of fire from 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 semi-automatic, fire. Yet a high rate of fire alone does not transform a semi-automatic into an automatic. 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.”⁶

II. ATF’s ANPRM Highlights the Problem with Its Ongoing Use of So-Called “Private Letter Rulings.”

ATF has a long and storied history issuing what it calls “private letter rulings.” Such letters are issued to manufacturers or individuals who voluntarily submit “samples” of firearms, parts, and other devices to ATF for analysis, and are designed to give an “informal” ruling as to whether a particular device is regulated as a firearm, a machinegun, or is instead an unregulated part, etc. ATF claims that such private letter rulings are informal, proprietary, confidential, and thus not precedential.⁷

Not only are private letter rulings revokable at will, but also there are no written rules, guidelines, or standards governing how ATF reaches its informal determinations in the first place. In fact, there is no rhyme or reason whatsoever, and often times ATF’s private letter rulings are inconsistent, or in open conflict, with other rulings. In other words, **ATF’s private letter rulings are, by definition, arbitrary and capricious.** The nature of ATF’s secret classification system has even led to some members of Congress introducing the “Fairness in

⁵ See <https://www.youtube.com/watch?v=7RdAhTxyP64>.

⁶ See <http://www.vpc.org/wp-content/uploads/2017/10/ATF-bump-fire-letter-2010.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>.

⁷ This is in contrast to what ATF terms “rulings,” which “interpret the requirements of laws and regulations and apply retroactively unless otherwise indicated ... may be used as precedents [and] the effect of subsequent legislation, regulations, court decisions, and rulings must be considered.” <https://www.atf.gov/rules-and-regulations/rulings>.

Firearm Testing Act” in an attempt to force ATF to adopt and operate under a clear set of rules.⁸

For decades ATF has sought to do as much business as possible through private letter rulings, desiring never to be held to any public, fixed standard. That means that ATF is free to change its mind at any time, for any reason (or for no reason at all) — which has permitted ATF repeatedly to engage in the sneaky tactic that could be called a “bait-and-switch” — and as a result has caused harm to the firearms community.⁹

For example, in March of 2002 and January of 2004, ATF issued two private letter rulings stating that the “Akins Accelerator” — a device designed to increase the rate of fire of a semi-automatic firearm — did not meet the statutory definition of a machinegun, and could be sold as an unregulated firearm part. However, after significant funds were invested, production ramped up, and countless Accelerators were manufactured and sold, ATF rescinded its prior letters and, in November 2006, claimed that the Accelerator was an unregistrable machinegun. GOF filed an *amicus curiae* brief in support of Akins’ legal challenge to ATF’s arbitrary actions.¹⁰

After its “reclassification,” ATF then moved against gun owners — “[b]esides mailing in all recoil springs in stock and his customer list, [ATF] demanded that Akins send an affidavit to each customer to account for all the devices sold. The recipients had to sign the document and return it to the ATF with the removed springs.”¹¹ History shows that ATF has used private letter rulings not only to put law-abiding manufacturers out of business after they have relied on ATF’s promises, but also to go after anyone who purchases such a firearm part — turning law-abiding gun owners into felons if they do not comply with ATF’s demands to turn over their once lawfully owned property.

In a similar scandal in July 2005, the ATF told firearm designer and manufacturer Len Savage that he was permitted to convert legally registered fully automatic firearms into belt-fed weapons — and then promptly rescinded its letter in April 2006 — even requiring Mr. Savage to destroy several lawfully owned machine guns that had been converted pursuant to ATF’s grant of permission!

⁸ See H.R. 2753, <https://www.congress.gov/bill/114th-congress/house-bill/2753/text>.

⁹ See, e.g., C. Neubauer, “Gun makers baffled by ATF criteria,” *The Washington Times* (Jan. 2, 2012) <https://www.washingtontimes.com/news/2012/jan/2/gun-makers-baffled-by-atf-criteria/>.

¹⁰ See <https://www.gunowners.com/litigation/34-akins-accelerator>.

¹¹ C. Wade, “Ban Of Device By ATF Triggers Inventor’s Ire,” *Tampa Bay Times* (Dec. 26, 2007) <http://www.tbo.com/news/ban-of-device-by-atf-triggers-inventors-ire-174591>.

Now, ATF's ANPRM may possibly be an attempt for ATF to engage in another bait-and-switch, this time with bump fire stocks, again setting up every gun owner who has bought one to either: (a) lose a significant amount of money from their purchase when they are forced to turn it in or (b) risk felony prosecution. Even though "ATF has issued a total of 10 private letters in which it classified various bump stock devices to be unregulated parts or accessories" (82 *Fed. Reg.* 60930), ATF now claims it is necessary to re-review devices that it already has reviewed nearly a dozen times. One would hope that ATF's intent is not to switch its prior position.

III. ATF's Request for Law-Abiding Manufacturers, Dealers, and Owners to Publicly Self-Report Is as Transparent as it Is Nefarious.

As part of its ANPRM, ATF has requested what it terms "public input" from "manufacturers," "retailers," and "consumers." Part of that "input" is a series of requests for manufacturers to self-report to the question "[a]re you, or have you been, involved in the manufacturing of bump stock devices?" Since ATF's intent may be to reclassify such devices as unregistered machineguns, why would anyone report to ATF that they have manufactured such devices? ATF continues that "[i]f so," "how many bump stock devices were produced? ... Of this number, how many devices were sold to (a) retailers/resellers, and (b) directly to consumers?" As to retailers, ATF asks, "how many bump stock devices did you sell?" And as for consumers, ATF asks "where have you seen these devices for sale?"

Not one of these questions has anything to do with whether ATF has the authority to regulate bump fire stocks — the text of the statute makes it perfectly clear that bump fire stocks are not machineguns. There is a real risk that ATF's questions could set the stage for its eventual illegal regulation of bump fire stocks, and subsequent attempts to track down innocent manufacturers, retailers, and consumers — threatening them with legal action (or felony prosecution) if they do not help ATF round up any bump fire stocks that have been sold to date. Perhaps that may not happen during this administration, but it surely could happen in a subsequent one.

Although couched in terms of "help us better understand the market," ATF's "requests" for voluntary submission of information will be understood by many to ask "please let us know where to execute our SWAT team raid." The danger of an escalating attack on the United States gun marketplace is palpable.

IV. Conclusion.

The ANPRM gives rise to the suspicion that ATF desires to "reclassify" bump fire stocks as machineguns, both in contravention of the statute and in derogation of ATF's prior position on the issue. If that is, in fact, ATF's intent, then such behavior is the sort that one could expect from an authoritarian regime, not a society where the right to keep and bear arms "shall not be infringed." Rather than operating within its limited statutory authority, ATF

would be threatening the American gun owner — regulating devices that are clearly legal, and threatening those who possess them with prosecution, essentially adopting the former motto of the TSA — “dominate, intimidate, control.”¹² This would not be the rule of law; it would be lawlessness.

Whether ATF chooses to undergo or forego a subsequent rulemaking on this issue, ATF should continue to stand by its constitutionally sound and legally correct conclusion that bump fire stocks are not machineguns under the statute, and thus cannot be regulated by the federal government.

Sincerely yours,

A handwritten signature in black ink, appearing to read "William J. Olson", is centered on a light gray rectangular background.

William J. Olson

WJO/ljs

¹² J. Bovard, “Dominate. Intimidate. Control.” Reason (Feb. 2004) <http://reason.com/archives/2004/02/01/dominate-intimidate-control>.