

**Response to Questions for the Record from Senator Charles E. Grassley  
for Stephen Halbrook**

U.S. Senate Committee on the Judiciary  
Hearing on “Firearm Accessory Regulation and Enforcing Federal and  
State Reporting to the National Instant Criminal Background Check System”  
December 6, 2017

On December 5, 2017, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") announced it was initiating the process of promulgating a federal regulation interpreting the definition of “machinegun” in the National Firearms Act and Gun Control Act to include bump stocks.

**1. In your opinion, how might bump stocks fit in the current statutory definition of machinegun?**

The term “bump stock” has no set definition and may or may not fit in the definition of machinegun depending on its design. The National Firearms Act (NFA), 26 U.S.C. § 5845(b), provides in part: “The term “machinegun” means any weapon which shoots, is designed to shoot, or can be readily restored to shoot,<sup>1</sup> automatically more than one shot, without manual reloading, by a single function of the trigger.”<sup>2</sup> A weapon would fit this definition only if it meets each and every element of the definition, i.e., it shoots (1) automatically (2) more than one shot (3) without manual reloading (4) by a single function of the trigger (or is so designed or readily restorable).

Even without the presence of other parts to compose a weapon, an item would be a “machinegun” if is a conversion kit, meaning “any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun.” § 5845(b). But that refers back to the basic definition of whether a weapon with such part(s) would shoot automatically more than one shot with a single function of the trigger.

By contrast, the term “semiautomatic rifle” is defined in part as a “repeating rifle . . .

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<sup>1</sup>“‘Readily restored to shoot’ is intended to mean that only a simple mechanical operation is required to restore a weapon to a capacity of fully automatic fire.” Individual Views of Messrs. Dirksen, Hruska, Thurmond, and Burdick on Title IV, in Report No. 1097, Senate Judiciary Committee, 90th Cong., 2d Sess., 280 (1968).

<sup>2</sup>The rest of the definition states: “The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.”

which requires a separate pull of the trigger to fire each cartridge.” 18 U.S.C. § 921(a)(28). *Staples v. United States*, 511 U.S. 600, 602 n.1 (1994), describes the differences as follows:

As used here, the terms “automatic” and “fully automatic” refer to a weapon that fires repeatedly with a single pull of the trigger. That is, once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted. Such weapons are “machineguns” within the meaning of the Act. We use the term “semiautomatic” to designate a weapon that fires only one shot with each pull of the trigger, and which requires no manual manipulation by the operator to place another round in the chamber after each round is fired.

The term “bump fire” has been applied to a technique of firing that a person may (or may not) learn to do with an ordinary semiautomatic rifle without adding any special parts or components. However, a “bump stock” implies a special device that facilitates bump firing of some type which may or may not be considered to constitute a machinegun. ATF Ruling 2006-2 classified such a device as a machinegun conversion kit because it has a spring that causes the trigger to contact the finger on firing.<sup>3</sup> That was upheld by the Eleventh Circuit on the following basis: “After a single application of the trigger by a gunman, the Accelerator uses its internal spring and the force of recoil to fire continuously the rifle cradled inside until the gunman releases the trigger or the ammunition is exhausted.”<sup>4</sup>

By contrast, the ATF Firearms Technology Branch, in a 2010 opinion, determined that the Slide Fire “bump-stock” is not a machinegun on the following basis:

The stock has no automatically functioning mechanical parts or springs and performs no automatic mechanical function when installed. In order to use the shooting device, the shooter must apply constant forward pressure with the non-shooting hand and constant rearward pressure with the shooting hand. Accordingly, we find that the “bump-stock” is a firearm part and is not regulated

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<sup>3</sup>“As the firearm moves rearward in the composite stock, the shooter’s trigger finger contacts the stock. The trigger mechanically resets, and the device, which has a coiled spring located forward of the firearm receiver, is compressed. Energy from this spring subsequently drives the firearm forward into its normal firing position and, in turn, causes the trigger to contact the shooter’s trigger finger.” ATF Ruling 2006-2.  
<https://www.atf.gov/firearms/docs/ruling/2006-2-classification-devices-exclusively-designed-increase-rate-fire/download>.

<sup>4</sup>*Akins v. United States*, 312 Fed. Appx. 197, 200 (11th Cir. 2009).

as a firearm under Gun Control Act or the National Firearms Act.<sup>5</sup>

A detailed description of how the above device works is described in a patent, the abstract of which states:

A method for rapidly firing a semi-automatic firing unit (22) having a trigger (24), a receiver (21) and a barrel (23). The firing unit (22) is placed in a handle (20) so as to enable only reciprocating linear movement along a constrained linear path (P). The user grasps the handle (20) and places their trigger finger (74) firmly on a finger rest (70). In use, the user generates a forward activation force (200) that urges the firing unit (22) forwardly so that the trigger (24) collides with the stabilized finger (74), stimulating the first round of ammunition in the receiver (21). A recoil force (202) from the discharging ammunition pushes the firing unit (22) rearwardly so that the trigger (24) separates from the stabilized finger (74). The intensity of the forward activation force (200) can be varied by the user on-the-fly to proportionally change the firing tempo.<sup>6</sup>

Instead of the finger pulling the trigger, the finger remains stable at the trigger rest while the trigger moves back and forward. The user maintains forward pressure on the handle, the trigger is pulled for the first shot, the recoil forces the stock and trigger rearward, which then return forward, pushing the trigger against the finger and causing another shot. Note that § 5845(b) refers to a “single *function* of the trigger,” not a single *pull* of the trigger, and it is thus not required that the finger actually pull the trigger. Moreover, a “trigger” broadly means any mechanism that fires a weapon, and need not be a traditional trigger.

Because unlawful possession of a machinegun is a serious felony, no room exists for speculation of whether a weapon is properly described as shooting “automatically more than one shot, without manual reloading, by a single function of the trigger.” The rule of lenity, required for due process, mandates that any doubt about the scope of a criminal law must be resolved against application of the law. *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517-18 (1992) (item held not to be NFA firearm); *Crandon v. United States*, 494 U.S. 152, 168 (1990) (if ambiguity arises, “we are construing a criminal statute and are therefore bound to consider application of the rule of lenity.”).

That said, ATF may issue a ruling or adopt an interpretative regulation informing the public of its reading of the statute. As noted, it did so in ATF Ruling 2006-2, which was upheld

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<sup>5</sup>John R. Spencer, Chief, ATF Firearms Technology Branch, June 7, 2010, 903050:MMK, 3311/2010-434. <http://www.slidefire.com/downloads/BATFE.pdf>.

<sup>6</sup>Method of Shooting a Semi-automatic Firearm, U.S. Patent 8127658, Abstract. This and five further patents are cited in *Slide Fire Solutions, L.P. v. Bump Fire Systems, LLC*, 2016 WL 3355141, \*1 (N.D. Tex. 2016).

by the court. With further testing and analysis, ATF may reconsider its above classification of the Slide Fire “bump-stock” to determine whether it was in error.

In sum, the term “bump stock” has been used to describe different designs. To provide notice and due process of law, the term should be defined with particularity. As with any other mechanism, each specific product must be analyzed to determine whether it fits in the definition of machinegun by reason of causing shots to be fired automatically, without manual reloading, with a single function of the trigger.

## **2. What should be done with bump stocks that have already been purchased by consumers?**

Bump stocks already purchased by consumers could be dealt with in several ways. First, possession of bump stocks could be prohibited to felons and other untrustworthy persons, as is currently the law regarding firearms and ammunition. 18 U.S.C. § 922(g). In addition, use of a bump stock in a federal crime of violence or drug trafficking crime can be punished with enhanced penalties. 18 U.S.C. § 924(c). Under this alternative, law-abiding persons could continue to possess bump stocks.

Second, to the extent a specific bump stock that was not previously considered a machinegun is now, on reconsideration, classified as a machinegun, persons in possession thereof could be allowed to register them. When the NFA was enacted in 1934, persons in possession of NFA firearms were allowed to register them.<sup>7</sup> When the definitions of NFA firearms were expanded in 1968, the law provided for an amnesty to allow the registration not only of the newly-defined “firearms,” but also of NFA firearms under the previous definitions.<sup>8</sup> When the definition of “machinegun” was enlarged again and future production for the civilian market banned in 1986, persons could register them before the effective date.<sup>9</sup> A general amnesty could be declared by the Attorney General allowing the registration of all items considered to be machineguns.

Third, the manufacture and importation of bump stocks for the civilian market could be banned, and those already possessed could be grandfathered. When misnamed “assault weapons” and magazines holding more than ten rounds were restricted in 1994 (which expired ten years later<sup>0</sup>, the law was inapplicable to firearms and magazines that were lawfully possessed

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<sup>7</sup>§ 5(a), National Firearms Act, 48 Stat. 1236, 1238 (1934).

<sup>8</sup>§ 207(b), Gun Control Act, P.L. 90-618, 82 Stat. 1213, 1235-36 (1968). Future amnesties are authorized. § 207(d), 82 Stat. at 1236.

<sup>9</sup>§ 102 (enacting § 922(o)), P.L. 99-308, 100 Stat. 449, 543 (1986). The bill passed the House on April 9, 1986, the Senate concurred on May 6, 1986, and was signed into law on May 19, 1986.

on the date of enactment.<sup>10</sup>

In sum, ideally restrictions on firearm-related items should apply to criminals and to criminal misuse, not to law-abiding persons. If bump stocks are to be restricted, persons already in possession should be grandfathered, or at least should be allowed to register them. It would be unprecedented simply to prohibit such items already possessed, when they were not considered to be restricted previously, and to subject the owners thereof to criminal penalties when such persons have no intent to misuse them.

**3. Bump stock devices can be easily manufactured by 3D printers or by other means. How should the ATF or Congress attempt to regulate devices that can be easily manufactured in someone's garage?**

The possibility that various devices may be “easily” manufactured in someone’s garage should be kept in perspective. Criminals would more readily acquire firearms or firearm devices on the black market than manufacture them with 3D printers. They would be more readily desirous of obtaining actual machinegun conversion kits than bump stock devices.

Serious, *mala in se* crimes such as murder may be “easily” committed, but the criminal law seeks deterrence through the imposition of severe penalties and seeks prevention by incarcerating dangerous persons, not by banning firearm possession by law-abiding persons. That should be kept in mind when considering what to do about potential *mala prohibita* offences involving mere possession without any necessary criminal intent.

3D printers are becoming normal technology for countless lawful purposes. Dissemination of knowledge of how to make things is protected by the First Amendment. Criminal penalties can be imposed for the making or possession of an object that is a proper exercise of the power of Congress. In doing so, 3D printers and a free press should not be the subjects of restriction.

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<sup>10</sup>18 U.S.C. § 922(v)(1), (2), (w)(1), (2) (expired).