



ATF's Ability to Regulate "Bump Stocks"

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UPDATE: Following the publication of this Sidebar, the Justice Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) published a [notice of proposed rulemaking](#) declaring its intention to clarify, through regulation, that "'bump fire' stocks, slide-fire devices, and devices with certain similar characteristics (bump-stock-type devices) are 'machineguns'" under the National Firearms Act (NFA) and the Gun Control Act (GCA). In doing so, ATF proposes to interpret three terms in the GCA and the NFA: (1) "single function of the trigger"; (2) "automatically"; and (3) "machinegun." Single function of the trigger will be defined as "single pull of the trigger." Automatically will mean "as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single pull of the trigger." And machinegun will include "a device that allows semiautomatic firearms to shoot more than one shot with a single pull of the trigger 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 (commonly known as bump-stock-type devices)." The public comment period closes June 27, 2018.

The original Sidebar post from March 22, 2018 providing background on the proposed rule is below.

Congressional interest in the legal framework for regulating "bump stock" devices abounded after [authorities discovered](#) that the perpetrator of the October 2017 mass shooting in Las Vegas, Nevada, had attached to his semiautomatic firearms an accessory that allowed his rifles to effectively mimic the firing capabilities of a fully automatic weapon. (These firearm accessories are commonly called "bump-fire," "slide-fire," or "bump-stock" devices, and more information on how they function can be found in [this CRS Insight](#) by William J. Krouse.) One pertinent question involves the degree to which the Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) may regulate, and potentially proscribe, the sale and possession of such devices under existing law. The answer to this question largely depends on whether a bump-stock device reasonably can be construed as falling under the federal statutory definition of a "machinegun."

In the months following the Las Vegas shooting, ATF, in an [advance notice of proposed rulemaking](#), [sought public comment](#) on "the nature and scope" of bump stock devices to help the agency determine whether a bump stock is a "machinegun" as defined in the [National Firearms Act of 1934 \(NFA\)](#) and the [Gun Control Act of 1968 \(GCA\)](#), as amended. The public comment period closed on January 25, 2018, and six weeks later, on March 10, ATF [submitted to the Office of Management and Budget \(OMB\)](#) a

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notice of a proposed regulation that would regulate bump-stock devices as machineguns. (If OMB approves the draft proposed regulation, ATF may publish the proposed rule in the *Federal Register* for public comment consistent with the procedures required by the [Administrative Procedure Act](#). Following the agency's consideration of these comments, ATF will provide the draft final rule to OMB for review before it may publish the rule as final.) The submission to OMB follows on the heels of [President Trump's](#) directive to the Justice Department "to dedicate all available resources" to reviewing the comments received and moving forward with rulemaking procedures with the goal of banning "all devices that turn legal weapons into machineguns." Also before the submission to OMB, Attorney General Sessions had [stated](#) that Justice Department leadership "have believed for some time that we can, through regulatory process, not allow the bump stock to convert a weapon from semiautomatic to fully automatic." However, some within ATF had reportedly believed the Bureau's legal authority to regulate bump stocks, as they are currently manufactured, was far from [clear](#).

Statutory Framework: The [NFA](#) and, by cross-reference, the [GCA](#), define 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." Significantly, the definition encompasses not only an automatic firearm itself, but also 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." Devices falling under these statutes' definition of "machinegun" are subject to stringent regulation. For instance, the [Firearm Owners' Protection Act of 1986](#) amended the GCA to prohibit the transfer and possession of a machinegun subject to two exceptions. The prohibition does not apply to (1) the transfer to, or by, or possession by (or under the authority of) federal or state authorities, and (2) the transfer or possession of a machinegun lawfully possessed before the effective date of the Act (May 19, 1986). The NFA governs the lawful transfer and possession of machineguns. NFA-regulated machineguns must be [registered](#) with the Attorney General, and the producer and transferor must [pay a tax \(subject to limited exceptions\)](#).

Regulatory Framework: Executive branch agencies [have limited authority](#) and may act only to the extent authorized by Congress. Most executive branch agencies, including ATF, are authorized to administer and interpret relevant existing laws through promulgating regulations. In doing so, an agency must comply with statutorily required procedures and may not exceed its authority or act in an arbitrary and capricious manner.

ATF's consideration of whether bump stock devices categorically fall under the GCA and NFA's definition of "machinegun" turns on whether such devices may convert a firearm into one that shoots "automatically ... by a single function of the trigger." ATF previously has [interpreted](#) this phrase to cover devices enabling a weapon to shoot "[more than one shot, without manual reloading, by a single pull of the trigger.](#)"

In the past, ATF has not treated bump-stock devices as a homogenous category of firearm accessory. This is likely because determining whether a firearm has been converted into a machinegun is a highly fact-based inquiry, and depends on how the firearm, as modified, functions. Indeed, as noted in this [CRS Insight](#), ATF, in previous determinations as to whether a bump stock converts a semi-automatic firearm into a machinegun, has reached [different conclusions](#) for different bump-stock devices based on how each device uniquely functions. Now, ATF is assessing whether it has broad authority to regulate bump stocks as a singular entity. Accordingly, the comments ATF receives about the functionality of bump stocks currently on the market likely will inform ATF's decision concerning whether a regulation banning bump stocks is within the agency's purview.

Considerations for Congress: As noted, ATF is presently determining whether its current legal authority permits it to regulate the manufacture, sale, or possession of bump-stock devices. But the scope of

ATF's authority to regulate bump stock devices is a creature of statute, and Congress can act (within the scope of [constitutional parameters](#)) to expand or curtail this authority. For example, if Congress wants to give ATF clear authority to regulate bump stocks, it could do so by (1) expressly directing ATF to initiate rulemaking to ban bump stocks within a certain timeline and/or (2) amending the definition of "machinegun" under the NFA and GCA so that bump stocks necessarily will fall under that definition. Alternatively, Congress, through its taxation powers (a constitutional basis for the NFA) and commerce [powers](#) (the constitutional basis for the GCA) potentially could ban or otherwise regulate bump stocks through independent legislation.

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