



Department of Justice

STATEMENT OF
THOMAS E. BRANDON
ACTING DIRECTOR
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND
EXPLOSIVES
U.S. DEPARTMENT OF JUSTICE

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

FOR A HEARING ON
“FIREARM ACCESSORY REGULATION AND ENFORCING
FEDERAL AND STATE REPORTING TO THE NATIONAL
INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)
”

PRESENTED
DECEMBER 6, 2017

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Thomas E. Brandon
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
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December 6, 2017

Chairman Grassley, Ranking Member Feinstein, and Members of the Committee, thank you for the opportunity to appear before you today to discuss firearm accessory regulation, particularly as it relates to devices commonly known as “bump-stocks.”

On behalf of all the men and women of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), I extend heartfelt condolences to the family, friends, and loved ones of those who were killed and injured in, as well as the survivors of, the awful attacks in Las Vegas and, more recently, Sutherland Springs, Texas. The ATF family knows all too well the horror of losing friends and family to gun violence. The scope of these tragedies is yet another reminder to all at ATF of the need for constant vigilance in fulfilling our mission to combat violent crime.

ATF’s role in the Las Vegas investigation has been in support of the Las Vegas Police Metro Department and other investigating agencies, with a focus on the recovered firearms and ammunition. Because the investigation is ongoing, however, I will be unable to answer specific questions about the case.

While carnage inflicted in Las Vegas is staggering, the support we are providing to the Las Vegas investigators is similar to the contributions ATF provides to local and State agencies every day to help solve and prevent crimes involving firearms violence. Although ATF is a small agency, we embrace the challenge of our mission, and strive to be the best partner possible to our colleagues – delivering investigative and technical expertise that drive results.

In addition to our crucial law enforcement mission, ATF is also the federal agency primarily responsible for enforcing the regulatory provisions of the federal firearms laws, particularly the National Firearms Act of 1934 (NFA) and the Gun Control Act of 1968 (GCA). ATF's authority to regulate firearms is, of course, limited by the terms of those statutes, and they do not empower ATF to regulate parts or accessories designed to be used with firearms. For ATF to regulate under these statutes, the device in question must fit within the GCA's definition of a firearm, or must fall within one of the specific categories of weapons defined in the NFA, such as machineguns.

The process of determining whether a device is a firearm or an NFA weapon is known as a "classification" determination. ATF encourages manufacturers and inventors to voluntarily submit devices to us for classification determinations to facilitate compliance with the law, including licensing requirements, and to provide certainty in the lawful firearms market. In making a classification, ATF determines only whether the device is a firearm, an NFA weapon, or a part or accessory that is *not* subject to ATF's regulatory authority. ATF does not have the authority to require

any manufacturer or inventor to submit a product for classification under the GCA or NFA, and it does *not* “approve” firearms, NFA weapons, or other items for manufacture or sale.

The horrible Las Vegas massacre has focused Congressional and public attention on specific type of firearm accessory - so-called “bump stocks.” Bump-stocks are devices that are designed to facilitate a shooting technique known as “bump firing.” Bump-firing is a technique in which the shooter uses the recoil energy of a semi-automatic firearm to accelerate the rate of fire by “bumping” the gun’s stock off the shooter’s shoulder or other item to re-engage the trigger more quickly, with the goal of mimicking automatic fire. Belt loops, slings, rubber-bands and other everyday items can be used to facilitate bump-firing. Some shooters are able to accomplish the technique without using any device or accessory.

ATF has, in the past, described ‘bump stocks’ as ‘devices that are exclusively designed to increase the rate of fire of a semiautomatic firearm.’ ATF began receiving requests to classify bump-stock type devices in 2003. The classification issue for these devices was whether the manner in which they facilitated bump-firing functioned as a machinegun under the NFA. In 2006, ATF made determinations regarding certain bump-stock devices that were exclusively designed to increase the rate of fire of a semiautomatic firearm. For instance, one device utilized springs to mechanically capture the recoil energy and re-engage the trigger. ATF determined that such devices would constitute machineguns if those devices, once activated by a single pull of the trigger, would initiate an automatic firing cycle, which continued until either the finger is released or the ammunition supply is exhausted.

In the ensuing years, industry innovated and developed bump-stock devices that did not include springs or similar components. Beginning in 2008, ATF received a series of classification requests for such bump-stock devices. We have classified most of these to be firearm accessories that are not subject to NFA regulation, either because the devices shot only one bullet per pull of the trigger, or because the devices did not appear to initiate a fully automatic firing cycle.

In the aftermath of the tragedy in Las Vegas, Members of Congress, including many on this Committee, and the general-public have asked ATF to re-examine its past decisions on bump-stocks to determine whether existing federal law can be interpreted to include these types of devices within the definition of machinegun. Under federal law, machineguns, with very limited exception, are prohibited. ATF and the Department of Justice undertook a review of the options available relating to certain bump-stock devices. After thorough consideration, ATF has decided to initiate the process of promulgating a federal regulation interpreting the definition of “machinegun” in the National Firearms Act and Gun Control Act to clarify whether certain bump-stock devices fall within that definition.

On December 4, 2017, ATF initiated that process by submitting an Advanced Notice of Proposed Rulemaking (ANPRM) to the Office of Management and Budget. Publication of this ANPRM will provide the public and industry the opportunity to submit formal comments to ATF on certain preliminary topics that will help inform ATF’s decision regarding further steps in the rulemaking process. We fully appreciate the desire of the public and Congress that this process move as quickly as possible, and will continue to update this Committee as we progress.

With respect to the second aspect of this hearing, the crucial role that the National Instant Criminal Background Check System (NICS) serves in protecting the

public from firearms-related violence, ATF works closely with our partners at the Federal Bureau of Investigation (FBI) to support its oversight and operation of that system. I am honored to participate in this panel with Douglas E. Lindquist, the FBI Assistant Director for the Criminal Justice Information Services Division, the FBI division that runs the NICS. The Attorney General recently directed ATF and FBI to identify ways to improve reporting of federal data into the NICS, and we look forward to continuing our excellent working relationship with AD Lindquist and his team in completing this important task. Mr. Chairman and Members of the Committee, thank you again for the opportunity to discuss this matter with you today. I am happy to answer any questions you may have.