Insight

ATF Issues Rule Banning Bump Stocks

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The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) released text of a final rule banning bump stock devices. The rule is notable because bump stocks were used in a recent high-profile mass shooting, and because it is a major regulatory action in an administration known for deregulation.

A HISTORY OF BUMP STOCKS REGULATION

Bump stocks are aftermarket equipment that convert semiautomatic firearms into, essentially, automatic ones. More specifically, according to ATF's final rule, bump stocks "convert an otherwise semiautomatic firearm into a machinegun by functioning as a self-acting or self-regulating mechanism that harnesses the recoil energy of the semiautomatic firearm in a manner that allows the trigger to reset and continue firing without additional physical manipulation of the trigger by the shooter."

New machineguns were banned by Congress in 1986, but language included in the legislation grandfathered machineguns registered previously. This freeze on new weapons created a high-priced market for automatic machineguns. As a result of this limited and expensive market, some sought to convert cheaper semiautomatic weapons into automatic ones that skirted the federal definition of machinegun. Bump stocks were invented as a means to this end.

In 2006, the ATF changed the classification of the most popular bump stock device, called the Akins Accelerator, to a machinegun. ATF reached this conclusion because the device allowed semiautomatic weapons to fire multiple shots with a single pull of the trigger. Courts upheld the change.

Oddly, however, between 2008 and 2017, ATF assessed other bump stock devices and

issued letter rulings allowing their use. ATF based their allowance on the definition of "automatic." ATF ruled that enabling a firearm to shoot multiple rounds with a single trigger pull by "harnessing a combination of the recoil (energy) and the maintenance of pressure by the shooter" (on the front of the weapon with the non-trigger hand) – rather than through a spring action like the Akins Accelerator – meant the weapon did not shoot automatically.

The October 1, 2017 shooting at a Las Vegas concert that killed 58 people and injured more than 800 was perpetrated by an individual using a bump stock device. This event led to public pressure on regulators, among others, to curb or ban their use.

Last December, ATF published an advanced notice of proposed rulemaking for public input on a potential rule redefining the definition of machinegun. On March 29, 2018, ATF published a proposed rule that would change the definition to ban bump stocks.

REGULATORY REQUIREMENTS AND ANALYSIS

The new final rule confirms the definitional change offered in the proposed version. The definition of machinegun gets into much more detail, evidenced by the definition growing from 29 words to more than 220. To ensure bump stock devices are covered, they are explicitly mentioned by name, and the definition includes any devices that "allow a semiautomatic firearm 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."

Bump stock owners (including retailers) will be required to turn in or destroy their devices within 90 days of the rule being published in the Federal Register.

As a regulatory measure for purposes of Executive Order 13771, the final rule imposes costs of $245.5 million (discounted at 7 percent over a 10-year period), according to agency estimates. This represents an increase from the proposed rule's estimated impact of $216 million. The costs estimated for the rule come from the forgone production and sales of bump stocks and with the time value (in wages) associated with turning the devices in to authorities or destroying them.

OUTLOOK

The bump stock rule is almost certainly headed to litigation, with opponents likely to seek a stay of the rule to prevent the ban from taking effect in 90 days. The public comments of the rule's opponents frequently brought up the second amendment and attempted to argue that

the proposed definition (now final) is not compatible with Congress's intent to ban machineguns. Further, the National Rifle Association, which in the days following the Las Vegas shooting seemed open to bump stock regulation, filed comments in opposition. Ultimately, the ATF and the Department of Justice felt confident enough in their legal analysis to ban bump stocks. As is so often the case with newsworthy rules, courts will have the final say.