



Citizens Committee for the Right to Keep and Bear Arms

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Via Federal eRulemaking Portal

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Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Ave. NE, Mail Stop 6N-518
Washington, DC 20226
ATTN: ATF 2021R-08

**RE: Docket No. ATF 2021R-08
RIN 1140-AA55**

To Whom It May Concern:

The Citizens Committee for the Right to Keep and Bear Arms (“CCRKBA”) makes this public comment to the Notice of Proposed Rulemaking titled, “Factoring Criteria for Firearms With Attached ‘Stabilizing Braces,’” Docket Number ATF 2021R-08, as published by the Department of Justice Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) at 86 Fed. Reg. 30826 (June 10, 2021) (the “proposed rule”).

CCRKBA (www.ccrkba.org) is a tax-exempt Washington-state non-profit corporation, organized under § 501(c)(4) of the IRS code. It is dedicated to protecting firearms rights by educating grass root activists, the public, legislators and the media. CCRKBA programs are designed to help Americans understand the importance of the Second Amendment and its role in keeping Americans free.

CCRKBA has over 650,000 members, to include disabled firearms enthusiasts, and has worked to promote Second Amendment rights throughout the United States since 1974. Its members are affected by ATF’s proposed expansion of gun controls under the National Firearms Act of 1934 (“NFA”) to pistols equipped with stabilizing braces.¹

¹ 26 U.S.C. § 5801 et seq.

I. ATF Treatment of Arm Braces

Stabilizing arm braces were created to provide shooting support to disabled combat veterans. They generally consist of two flaps, a strap, and shroud attached to the end of a firearm.² This simple configuration allows users to stabilize firearms against their forearms, resulting in more accurate shooting without compromising safety or comfort, and reducing the risk of bruising and other injuries when shooting from one hand.

ATF initially acknowledged that pistols equipped with stabilizing braces are not subject to the NFA in 2012.³ Since that time, stabilizing braces have become common firearms accessories.

According to an estimate provided in a 2021 Congressional Research Service report, “there are between **10 and 40 million stabilizing braces and similar components already in civilian hands**, either purchased as accessories or already attached to firearms made at home or at the factory.”⁴ The Congressional Research Service further reported, “[a]ltering the classification of firearms equipped with stabilizing braces would likely affect millions of owners.”⁵

As reflected in the proposed rule, ATF now seeks to reclassify millions of stabilizing brace-equipped pistols as subject to the NFA, triggering NFA paperwork requirements, taxes, long wait times, and transfer restrictions.⁶ The change would require current owners of stabilizing brace-equipped pistols caught by ATF’s expanded NFA controls to register their firearm and pay the ATF \$200 tax, turn the firearm into ATF, or take one of several other undesirable options.

II. ATF’s Proposed Expansion of NFA Control

ATF’s proposed rule would amend the definition of “rifle” in definitional sections of the regulations implementing the Gun Control Act (“GCA”) and the NFA at 27 C.F.R. sections 478.11 and 479.11, respectively, to expand NFA control to cover “any weapon with a rifled

² See e.g., www.sb-tactical.com (last assessed July 6, 2021).

³ ATF Letter to Redacted Recipient, Nov. 26, 2012.

⁴ William J. Krouse, *Handguns, Stabilizing Braces, and Related Components*, Congressional Research Service, April 19, 2021, p. 2 (the “CRS Report”) (emphasis added), available at <https://crsreports.congress.gov/product/pdf/IF/IF11763> (last assessed August 26, 2021).

⁵ *Id.*

⁶ The public comment submitted by the Second Amendment Foundation details the many twists and turns in ATF’s interpretations over the last decade before the proposed rule. The proposed rule is ATF’s second attempt to impose NFA restrictions on brace-equipped firearms. ATF withdrew its previous rulemaking after it received letters signed by over 100 members of Congress that objected to the arbitrary and subjective nature of proposal and over 70,000 public comments.

barrel equipped with an accessory or component purported to assist the shooter stabilize the weapon while shooting with one hand, commonly referred to as a ‘stabilizing brace,’ that has objective design features and characteristics that facilitate shoulder fire, as indicated on a new proposed ATF Worksheet 4999.”⁷

Proposed ATF Worksheet 4999 would use a point scoring scheme that relies on vaguely defined features and bias thresholds that would subject nearly every stabilizing brace-equipped firearm configuration to the NFA. Under the proposed scheme, a pistol must not be too long or too short. It must not be too light or too heavy. A configuration can be penalized for having sights and for not having sights.

A. Unlimited ATF Discretion

The proposed scoring scheme would allow ATF to impose NFA control over pistols that do not even score above the stated point threshold.⁸ This does not sufficiently limit ATF discretion and ATF must stop interpreting the law one way for one person and differently for others. Stabilizing braces and pistols are simple items in common use. To the extent ATF knows all the design features it intends to control, it must not disclose some features and keep others secret, locked away in the desk draw of some unidentified government official until an enforcement action.

B. Bias Scoring Allocations

Many of the proposed features overlap and would allow ATF to unfairly stack points for a single factor. Other sources of bias in ATF’s proposed scoring methodology include:

- ATF’s proposed use of “length of pull”, weight, and length as measurements in assessing points fails to fairly account for physical variances among users. As a result, the proposed scheme would unfairly penalize braces properly sized for the purpose of one-handed shooting. It will also result in inequal treatment of female gun owners and owners with physical disabilities, who will be disproportionately impacted by ATF’s proposed scoring scheme because of their physical limitations.
- The proposed rule lists “Rear Surface Area” as an accessory characteristic, but it does not provide any specific measure for rear surface area in inches

⁷ 86 Fed. Reg. at 30851.

⁸ *Id.* at 30830 (“The Bureau of Alcohol, Tobacco, Firearms and Explosives reserves the right to preclude classification as a pistol with a ‘stabilizing braces’ for any firearm that achieves an apparent qualifying score but is an attempt to make a ‘short-barreled rifle’ and circumvent the GCA or NFA.”) and 30834 (“Even if a weapon accrues less than 4 points in each section, attempts by a manufacturer or maker to circumvent Federal law by attaching purported “stabilizing braces” in lieu of shoulder stocks may result in classification of those weapons as “rifles” and “short- barreled rifles.”).

or otherwise. Instead of simply providing an objective measure for rear surface area, ATF proposes vague evaluation criteria that will increase agency confusion.

- ATF's proposed "Accessory Design" characteristics rely on vague factors that can result in NFA control based on features with functions that do not relate to use against the shoulder.

III. Unlawful Burdens on Second Amendment Rights

ATF's proposed changes will impose NFA application, fingerprinting, photographing, chief law enforcement certification, registration, taxes, and transfer restrictions on firearms owned by millions of citizens. The NFA registration requirement involves wait times of several months to half a year or more.⁹ In addition, ATF's Preliminary Regulatory Analysis, which accompanies the proposed rule, acknowledges that ATF's policy change will put multiple manufacturers out of business and impose significant financial burdens on the firearms industry generally. These burdens will unlawfully infringe on the Second Amendment rights of millions of citizens to keep and bear arms in common use. *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008). No substantial public safety concern will be served by these burdens.

IV. Other Concerns

Other concerns with the proposed rule include the following:

- ATF does not provide any exemption for disabled and smaller-sized persons who have clear and legitimate needs for use of stabilizing braces.
- ATF does not clearly state whether those in possession of brace-equipped pistols are required to obtain ATF classifications or if they can rely on their own self-classifications or rely on self-classifications by others.
- ATF does not clearly explain the differences in ATF treatment of stabilizing brace-equipped GCA-regulated shotguns.
- Despite its earlier proposal to waive the NFA tax and expedite processing for affected gun owners,¹⁰ ATF's proposed rule does not include any provisions for an NFA tax waiver or expedited processing for affected gun owners.

⁹ See *Transfer Tracking*, NFA TRACKER, available at <https://www.nfatracker.com/nfa-transfer-time-tracking/> (last assessed August 26, 2021).

¹⁰ 85 Fed. Reg. at 82519.

On the latter point, ATF should not tax or otherwise penalize gun owners for ATF's sudden policy reversal, especially a reversal that unlawfully infringes Second Amendment Rights.

V. Conclusion

ATF does not have the authority to impose NFA control on stabilizing braces and its proposed rule will threaten millions of citizens with prison, harsh fines, forfeiture of firearms, and the loss of the right to own or possess firearms should they fail to comply with ATF's policy change. Because of this and for all the reasons stated above, CCRKBA strongly urges ATF to reconsider its position.

Sincerely,

CITIZENS COMMITTEE FOR THE
RIGHT TO KEEP AND BEAR ARMS

A handwritten signature in blue ink that reads "Alan M. Gottlieb". The signature is written in a cursive, flowing style.

Alan Gottlieb
Chairman