



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

Washington, DC
www.atf.gov

April 11, 2023

The Honorable Thomas Tiffany
United States House of Representatives
Washington, D.C. 20515

Dear Representative Tiffany:

This responds to your letter to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Director Steven Dettelbach, in which you forwarded a letter on behalf of your constituent, Polk County Sheriff Brent Waak, regarding his claim that Final Rule 2021R-08F, “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces’” (Final Rule) is inconsistent with prior ATF guidance and may turn law-abiding citizens into felons. We appreciate the opportunity to provide the following response to Sheriff Waak’s concerns.

ATF is dedicated to upholding the Constitution while carrying out our critical mission of protecting the public from violent crime. Our mission is focused on enforcing the laws enacted by Congress, including the National Firearms Act of 1934 (NFA) and the Gun Control Act of 1968. Enforcing these statutes at times involves the promulgation of regulations; in doing so, ATF is committed to fully complying with the legal requirements Congress has set in the Administrative Procedure Act, 5 U.S.C. § 500 *et. seq.* (APA) to ensure open and transparent rulemaking.

As you may be aware, the Final Rule became the subject of litigation after it went into effect.¹ Consistent with longstanding Department of Justice (Department) policy, ATF is unable to comment on matters that are the subject of pending litigation beyond that which is already in the public record. Notwithstanding this limitation, we refer you and Sheriff Waak to the information about the Final Rule on ATF’s website, which includes extensive commentary,²

¹ See, e.g., *Britto, et al. v. ATF*, No. 2:23-cv-00019-Z (N.D. Tx.); *Mock, et al. v. Garland, et al.*, No. 3:23-cv-232 (N.D. Tx.); *Watterson v. ATF, et al.*, 23-cv-00080 (E.D. Tx.).

² See Federal Register, *Proposed Rule: Factoring Criteria for Firearms With Attached “Stabilizing Braces”* (Jun. 10, 2021), 86 FR 30826-51, available at www.govinfo.gov/content/pkg/FR-2021-06-10/pdf/2021-12176.pdf.

FAQs,³ and guidance for affected parties:⁴ *Rules and Regulations: Factoring Criteria for Firearms with Attached “Stabilizing Braces,”* available at <https://www.atf.gov/rules-and-regulations/factoring-criteria-firearms-attached-stabilizing-braces>.

The Final Rule contains more than 70 pages of analysis from ATF and the Department in response to the more than 237,000 public comments received on the proposed rule from individuals, government officials, and various interest groups.⁵ Specifically, with respect to Sheriff Waak’s concern about inconsistencies between the Final Rule and prior classifications, the Final Rule offered the following response to commenters who similarly “asserted that the proposed rule is another ‘flip flop’ by [ATF] agency and arbitrary and capricious in violation of the APA”:

The Department disagrees that any prior inconsistencies or changes by ATF make this rule arbitrary and capricious under the APA. Despite inconsistencies in ATF’s prior classifications, each classification letter referenced ATF’s practice of considering the physical design characteristics or features when looking at a ‘stabilizing brace’ device on a firearm. The Department acknowledges that this rule is a change in position from some of ATF’s previous classifications or positions, but the intent of this rule is to resolve prior inconsistencies and ensure consistent application of the statutory definition of ‘rifle’ to firearms equipped with ‘stabilizing braces’ or other rearward attachments. As discussed below, the prevalent shouldering of these firearms further demonstrates that a majority of firearms equipped with ‘stabilizing braces,’ currently or previously available on the market, incorporate rifle characteristics. Therefore, it is necessary for the Department to issue this rule to clarify the statutory definition of ‘rifle’ and to inform the public of the best interpretation of the definition, which will guide the proper legal and factual analysis to be conducted in evaluating whether a firearm is designed, made, and intended to be fired from the shoulder. As a result, and to ensure consistency moving forward, ATF’s prior classifications pertaining to ‘stabilizing brace’ devices, or firearms equipped with a ‘stabilizing brace,’ are no longer valid or authoritative as of May 31, 2023.⁶

In addition, with respect to Sheriff Waak’s concern about law-abiding citizens becoming felons, the Final Rule does not criminalize the possession of “stabilizing braces,” nor are persons who were in possession of an unregistered short-barreled rifle equipped with a “stabilizing brace” as of January 31, 2023, prevented from retaining their NFA firearm. In exercising its enforcement

³ See ATF, *Final Rule 2021R-08F Frequently Asked Questions and SBA Compliance Guide* (Feb. 13, 2023), available at www.atf.gov/firearms/docs/undefined/final-rule-2021r-08f-frequently-asked-questions-and-sba-compliance-guide-2/download.

⁴ See ATF, *Affected Parties and their Options Under the Stabilizing Brace Final Rule*, available at www.atf.gov/rules-and-regulations/docs/undefined/stabilizingbracefinalrule-sec508-v2pdf/download.

⁵ See Federal Register, *Final Rule: Factoring Criteria for Firearms With Attached “Stabilizing Braces”* (Jan. 31, 2023) at 88 FR 6478, available at <https://www.govinfo.gov/content/pkg/FR-2023-01-31/pdf/2023-01001.pdf>.

⁶ *Id.* at 88 FR 6501-6506 (Department’s response to comments concerning “APA-Change in ATF Position”).

discretion, the Department has determined that if a person is in possession of a weapon with a “stabilizing brace” that falls within the NFA’s definition of “firearm,” they can continue to possess and use it if the statutory requirements are followed. All individuals who possess such a firearm may register that firearm in the National Firearms Registration and Transfer Record no later than May 31, 2023, on an ATF Form 1, without paying the \$200 making tax.⁷ Thus, persons with disabilities may continue to use their stabilizing braced weapon as long it is properly registered under the NFA.⁸ In addition, there are other options available for any individual affected by the NFA’s restrictions, so that they can continue to use a “stabilizing brace” while remaining in compliance with the law. Furthermore, even after issuance of the Final Rule, a weapon with a “stabilizing brace” may be possessed without any NFA restrictions if that weapon, with the brace attached, falls outside the NFA’s definition of “firearm” (*e.g.*, the weapon is not designed, made, and intended to be fired from the shoulder).⁹

Should you have any further questions on this or any other matter, please do not hesitate to contact ATF’s Legislative Affairs Division at (202) 648-8510 or via email at atflegislativeaffairs@atf.gov.

Sincerely,



Justin D. O’Connell
Acting Assistant Director
Public and Governmental Affairs

⁷ *See id.* at 88 FR 6571 (Discussion of Tax Forbearance).

⁸ *See id.* at 88 FR 6570 (Options for Affected Persons).

⁹ *See id.* at 88 FR 6509 (Department’s response to comments concerning “Violates the Americans with Disabilities Act (‘ADA’) or the Rehabilitation Act of 1973”).