

Questions for the Record

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For a Hearing Entitled “Oversight of the Bureau of Alcohol, Tobacco, Firearms and Explosives”

Committee on Judiciary
U.S. House of Representatives

April 26, 2023

Questions Posed by Chairman Jordan

QUESTION 1. How many Form 1 applications have been submitted pursuant to the ATF’s Stabilizing Brace Rule (2021R-08F)?

RESPONSE: As of September 15, 2023, approximately 260,744 Form 1 applications have been submitted pursuant to Final Rule 2021R-08F, “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces’” (“Final Rule”).

QUESTION 2. If the answer to the first question suggests that less than 25% of expected owners of brace-equipped firearms have applied to register their firearm, will the ATF consider extending the deadline to file a Form 1 in order to provide additional public notice and education on the new requirements?

RESPONSE: As set forth in Section V.B of the Final Rule, persons (who are not federal firearms licensees) in possession of a short-barreled rifle equipped with a stabilizing brace had until May 31, 2023, to take one of the following steps to comply with the National Firearms Act’s requirement:¹

1. Remove the short barrel and attach a 16-inch or longer rifled barrel to the firearm, thus removing it from the scope of the NFA.
2. Submit through the eForms system an Application to Make and Register a Firearm, ATF Form 1 by May 31, 2023.
3. Permanently remove and dispose of, or alter, the “stabilizing brace” such that it cannot be reattached, thereby removing the weapon from regulation as a “firearm” under the NFA.

¹ See Federal Register, *Final Rule: Factoring Criteria for Firearms With Attached “Stabilizing Braces”* (Jan. 31, 2023) at 88 Fed. Reg. 6478, 6570, available at <https://www.govinfo.gov/content/pkg/FR-2023-01-31/pdf/2023-01001.pdf>.

4. Turn the firearm in to your local ATF office.
5. Destroy the firearm.

Accordingly, because submission of a Form 1 is only one method for NFA compliance, ATF is unable to determine the percentage of affected individuals who complied by May 31, 2023. Moreover, those who chose to comply using Option 2 were not subject to the \$200 NFA tax provided they submitted Form 1 by May 31, 2023.

The deadline set by the Final Rule was not subject to unilateral extension by ATF. Irrespective of the deadline set in the Final Rule, ATF will maintain outreach and education efforts to industry and the public on compliance for all NFA weapons, including brace equipped short-barreled rifles.

QUESTION 3. What percentage of Form 1 applications submitted under the Stabilizing Brace Rule have been disapproved by the ATF for reasons other than the background check?

RESPONSE: As of September 15, 2023, approximately 20,756 Form 1 applications, or 7.96% of all Form 1 applications submitted pursuant to Final Rule 2021R-08F, have been disapproved for reasons other than a background check. Of these, approximately 7,941, or 3.05% of all applications received, were disapproved because the application was incomplete.

QUESTION 4. Is the ATF reassigning personnel from processing Form 4 applications to processing Form 1 applications submitted pursuant to the Stabilizing Brace Rule?

RESPONSE: ATF has significantly expanded staffing at the NFA Division by adding 20 new full-time employees in FY2023. ATF has also surged processing NFA applications to seven days a week, and has increased the level of effort to the research and correction of errors in submitted applications. This staff expansion is focused on enhancing efficiency and thereby reducing processing times for both Form 1 and Form 4 applications.

Questions Posed by Representative Issa

QUESTION 1. Does the ATF have the authority to issue a classification letter to Americans determining whether an item or product is captured by the federal definition of a firearm.

RESPONSE: Yes, ATF has delegated statutory authority and express regulatory authority to issue classification letters.

Section 926 of Title 18 of the United States Code authorizes the Attorney General to issue rules and regulations necessary to carry out the provisions of the Gun Control Act of 1968 (GCA)). Similarly, Section 7801(a) of Title 26 of the United States Code authorizes the Attorney General to enforce and administer the relevant provisions of the National Firearms Act of 1934 (NFA). The Attorney General's authorities were delegated to the ATF Director pursuant to 28 CFR 0.130. That section provides, among other things, that ATF shall "[i]nvestigate, administer, and enforce the laws related to alcohol, tobacco, firearms, explosives, and arson, and perform other duties as assigned by the Attorney General, including exercising the functions and powers of the Attorney General under the following provisions of law [GCA and NFA]." *See* 28 CFR 0.130(a).

Regulations issued by ATF pursuant to these authorities expressly authorize ATF to issue determinations (otherwise known as classifications) to persons upon receipt of a written, voluntary request, executed under the penalties of perjury. *See* 27 CFR 478.92(c) & 479.102(c).

QUESTION 1(a). Has the ATF classified a less-than-lethal device as a firearm?

RESPONSE: The federal firearm laws and regulations do not use the term "less-than-lethal." In issuing classification determinations, ATF applies the statutory definitions of "firearm" from the GCA and NFA to the device in question regardless of whether the item is publicly characterized or marketed as "less-than-lethal." When a device is a weapon that "expel[s] a projectile by the action of an explosive," it can meet the definition of "firearm" under the GCA, regardless of whether the projectile it expels is lethal. *See* 18 U.S.C. § 921(a)(3)(A). Likewise, a concealable smooth bore weapon or device "from which a shot can be discharged through the energy of an explosive" can be "any other weapon" and a "firearm" under the NFA, regardless of whether the shot it expels is lethal. *See* 26 U.S.C. § 5845(a)(5), (e). Consequently, ATF previously has classified certain weapons marketed as "less-than-lethal" as "firearms" if those products fall within the applicable statutory definitions.

QUESTION 2. Does Director Dettelbach agree that less-than-lethal devices promote public safety?

RESPONSE: Given that the federal firearm laws do not use or define the term “less-than-lethal”—or otherwise address the public safety implications of devices other than defined categories of “firearms”—ATF is not in a position to opine on the public safety implications of such an undefined category of devices.

QUESTION 3. Would the ATF classify a less-than-lethal tool – such as a taser – as a firearm if it expelled a non-lethal projectile by the action of an explosive?

RESPONSE: As stated in response to Question 1, the federal firearm laws do not use the term “less-than-lethal.” Moreover, the definition of “firearm” in the GCA and the definition of “any other weapon” in the NFA do not distinguish between projectiles expelled by the action of an explosive that are lethal from those that are marketed as “less-than-lethal.” For purposes of applying the federal firearm laws, the means by which a device expels a projectile is relevant. For example, if a weapon uses the action of an explosive to expel a projectile, that device is a “firearm” under the GCA, regardless of its designation or marketing as a “Taser” or other “less-than-lethal” device. Consequently, ATF has previously classified “Taser”-type devices that expelled projectiles by the action of an explosive to be “firearms” under the GCA, and as “any other weapons” under the NFA. *See* ATF Ruling 1976-6, Tasers as Firearms, available at www.atf.gov/firearms/docs/ruling/1976-6-tasers-firearms/download, and ATF Ruling 1980-20, Rifle Bore Tasers as Firearms, available at <https://www.atf.gov/firearms/docs/ruling/1980-20-rifle-bore-tasers-firearms/download>.

QUESTION 4. Pneumatic air guns are exempt from the Gun Control Act. Does a less-than-lethal device which fires a projectile at under 500 feet per second (fps) pose any greater threat to public safety than a standard pneumatic air gun, which fires at an average of 1,000fps?

RESPONSE: Because the federal firearms laws do not use the term “less-than-lethal,” ATF is not positioned to opine on the relative public safety threats posed by the devices described in the question. Moreover, the GCA does not “exempt” pneumatic air guns; rather, the GCA does not regulate such devices because they do not “expel a projectile by the action of an explosive,” and therefore do not fall within the GCA’s definition of “firearm.” *See* 18 U.S.C. § 921(a)(3)(A) (“The term ‘firearm’ means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive[.]”).

QUESTION 5. What is the ATF’s assessment of whether the federal definition of the term “firearm” and/or the ATF’s own interpretation of the term unnecessarily stifle innovation in less-than-lethal technology by failing to exclude less-than-lethal tools that use a small explosive charge to propel a projectile?

RESPONSE: ATF applies the Congressionally-enacted statutory definitions of “firearm” when it classifies devices. Because the federal firearms laws do not use the term “less-than-lethal,” ATF is not positioned to opine on innovation within this undefined category.

QUESTION 5(a). If Congress were to exclude low velocity non-lethal technology from the Gun Control Act, would ATF presently have the capacity to test muzzle velocity in feet-per-second?

RESPONSE: Yes, ATF currently has the capability to test the muzzle velocity of a firearm.

QUESTION 6. Please provide the number of full-time staff (and full-time equivalents or contractors) on ATF's or its contractors' payrolls – employed during the first pay period of January 2023 – at each ATF office (including local offices, field divisions, Washington headquarters, and international), and broken down by GS Grade and SES Levels (or contractor-equivalent), GS-7 and above, for each of ATF's respective offices.

RESPONSE: As of January 2023, ATF had approximately 5,004 employees on payroll at the GS-7 level and above (FTEs) and approximately 2,372 contractor equivalents (Contractors). At that time, nearly half of these ATF (a) FTEs were located in Washington, D.C. (1,270), Martinsburg, West Virginia (833) or Atlanta, Georgia (129); and (b) Contractors were located in Washington, D.C. (629), Martinsburg, West Virginia (582), or Beltsville, Maryland (35).

QUESTION 7. How many Form 1 applications has the ATF received pursuant to ATF's Stabilizing Brace Rule (2021R-08F) since January 13th, 2023?

RESPONSE: As of September 15, 2023, approximately 260,744 Form 1 applications have been submitted pursuant to Final Rule 2021R-08F, "Factoring Criteria for Firearms with Attached 'Stabilizing Braces'" ("Final Rule").

QUESTION 7(a). If fewer than 25% of expected owners of brace-equipped firearms have applied to register their firearms, will the ATF consider extending the deadline to file a tax-exempt Form 1 in order to provide additional public notice and education on this issue?

RESPONSE: As set forth in Section V.B of the Final Rule, persons (who are not federal firearms licensees) in possession of a short-barreled rifle equipped with a stabilizing brace had until May 31, 2023, to take one of the following steps to comply with the National Firearms Act's requirement:²

1. Remove the short barrel and attach a 16-inch or longer rifled barrel to the firearm, thus removing it from the scope of the NFA.
2. Submit through the eForms system an Application to Make and Register a Firearm, ATF Form 1 by May 31, 2023.
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4. Turn the firearm in to your local ATF office.
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Accordingly, because submission of a Form 1 is only one method for NFA compliance, ATF is unable to determine the percentage of affected individuals who complied by May 31, 2023. Moreover, those who chose to comply using Option 2 were not subject to the \$200 NFA tax provided they submitted the Form 1 by May 31, 2023.

The deadline set by the Final Rule was not subject to unilateral extension by ATF. Irrespective of the deadline set in the Final Rule, ATF will maintain outreach and education efforts to industry and the public on compliance for all NFA weapons, including brace equipped short-barreled rifles.

QUESTION 8. What percentage of Form 1 applications submitted under ATF's Stabilizing Brace Rule (2021R-08F) have been denied or disapproved by ATF for reasons other than the background check, since January 13th, 2023?

RESPONSE: As of September 15, 2023, approximately 20,756 Form 1 applications, or 7.96% of all Form 1 applications submitted pursuant to Final Rule 2021R-08F, have been disapproved for reasons other than a background check. Of these, approximately 7,941, or 3.05% of all applications received, were disapproved because the application was incomplete.

QUESTION 9. Has ATF reassigned, or is ATF planning on reassigning personnel from processing Form 4 applications to processing Form 1 applications submitted pursuant to the Stabilizing Brace Rule?

RESPONSE: ATF has significantly expanded staffing at the NFA Division by adding 20 new full-time employees in FY2023. ATF has also surged processing NFA applications to seven days a week, and has increased the level of effort to the research and correction of errors in submitted applications. This staff expansion is focused on enhancing efficiency and thereby reducing processing times for both Form 1 and Form 4 applications.