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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Parts 478 and 479

[Docket No. ATF 2021R-08; AG Order No. 5070-2021]

RIN 1140-AA55

Factoring Criteria for Firearms with Attached "Stabilizing Braces"

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Department of Justice ("Department") proposes amending Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") regulations to clarify when a rifle is "intended to be fired from the shoulder." The Department proposes factors ATF considers when evaluating firearms equipped with a purported "stabilizing brace" to determine whether these weapons would be considered a "rifle" or "short-barreled rifle" under the Gun Control Act of 1968 ("GCA") or a "rifle" or "firearm" subject to regulation under the National Firearms Act ("NFA"). This proposed rule is a separate action from the Notice on the Objective Factors for Classifying Weapons with "Stabilizing Braces" published on December 18, 2020, and withdrawn on December 31, 2020. No comments received under the withdrawn notice were considered for this proposed rule, and no comments received pursuant to that notice will be considered as part of this proposed rule. Commenters will need to submit new comments in connection with this proposed rule.

DATES: Written comments must be postmarked, and electronic comments must be submitted on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION

IN THE FEDERAL REGISTER]. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by docket number ATF 2021R-08, by any of the following methods—

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Denise Brown, Mail Stop 6N-518, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Ave. NE, Washington DC 20226; *ATTN: ATF 2021R-08*.
- *Fax:* (202) 648-9741.

Instructions: All submissions received should include the agency name and docket number (ATF 2021R-08) for this notice of proposed rulemaking. All properly completed comments received will be posted without change to the Federal eRulemaking portal, www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Denise Brown, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Ave. NE, Washington DC 20226; telephone: (202) 648-7070 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Attorney General is responsible for enforcing the GCA, as amended, and the NFA, as amended.[1] This includes the authority to promulgate regulations necessary to enforce the provisions of the GCA and NFA. *See* 18 U.S.C. 926(a); 26 U.S.C. 7801(a)(2)(A)(ii), 7805(a). The Attorney General has delegated the responsibility for administering and enforcing the GCA and NFA to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. *See* 28 CFR 0.130(a)(1)–(2). Accordingly, the Attorney General and ATF have promulgated regulations implementing both the GCA and the NFA. *See* 27 CFR parts 478, 479. The ATF Director delegated the authority to classify firearms pursuant to the GCA and NFA to ATF's Firearms Technology Criminal Branch ("FTCB") and the Firearms Technology Industry Services Branch ("FTISB"), within the Firearms and Ammunition Technology Division ("FATD"), Office of Enforcement Programs and Services ("EPS").[2] FATD supports the firearms industry and the general public by, among other things, responding to technical inquiries and by testing and evaluating firearms voluntarily submitted to ATF for classification under the GCA or NFA. There is no requirement that the firearms industry or the public submit firearms to ATF for evaluation of the firearm's proper classification under Federal law.

The statutory definitions of "firearm" under the GCA and the NFA are different.[3] In 1934, Congress passed the NFA in order to regulate certain "gangster" type weapons.[4] These weapons were viewed as especially dangerous and unusual, and, as a result, are

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[1] NFA provisions still refer to the "Secretary of the Treasury." However, the Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, transferred the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(c)(1). Thus, for ease of reference, this notice of proposed rulemaking refers to the Attorney General throughout.

[2] Delegation of Authorities within the Bureau of Alcohol, Tobacco, Firearms and Explosives, Delegation Order 1100.168C (Nov. 5, 2018).

[3] 18 U.S.C. 921(a)(3) (GCA definition of firearm); 26 U.S.C. 5845(a) (NFA definition of firearm).

[4] Congress chose to regulate these firearms by taxing them. Therefore, the NFA is part of the Internal Revenue Code.

subject to taxes and are required to be registered with ATF.[5] 26 U.S.C. 5811, 5821, 5841, 5845. The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), recognized these additional constraints as consistent with the Second Amendment. "We also recognize another important limitation on the right to keep and carry arms. [*United States v.*] *Miller*[, 307 U.S. 174 (1939),] said, as we have explained, that the sorts of weapons protected were those 'in common use at the time.' 307 U.S., at 179, 59 S. Ct. 816. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of "dangerous and unusual weapons." *Id*. at 627.

As a result of the different definitions in the GCA and NFA, classification of a weapon as a "firearm" under the GCA or the NFA affects how it is regulated under Federal law. For instance, a weapon classified as a "firearm" under only the GCA is subject to interstate controls, but is not subject to making or transfer taxes, and need not be registered in the National Firearms Registration and Transfer Record ("NFRTR") as required by the NFA. *See* 18 U.S.C. 922(a)(1); 26 U.S.C. 5812, 5822, 5841, 5845. In contrast, weapons classified as NFA firearms are generally regulated under both statutes.

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[5] Courts have recognized the dangerousness and uniqueness of NFA firearms and that possession of unregistered firearms poses a danger to the community. *United States v. Jennings*, 195 F.3d 795, 799 (5th Cir. 1999) (Congress determined that the unregistered possession of the particular firearms regulated under the NFA should be outlawed because of "the virtual inevitability that such possession will result in violence"); *see United States v. Cox*, 906 F.3d 1170 (10th Cir. 2018) ("[T]he historical tradition of prohibiting the carrying of dangerous and unusual weapons" supported limiting the Second Amendment's protection to weapons "in common use at the time" of ratification. (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008)); *United States v. Marzzarella*, 614 F.3d 85, 95 (3rd Cir. 2010) (explaining that a long gun with a shortened barrel is both dangerous and unusual, because "its concealability fosters its use in illicit activity," and "because of its heightened capability to cause damage"); *United States v. Amos*, 501 F.3d 524, 531 (6th Cir. 2007) (McKeague, J., dissenting) ("[A] sawed-off shotgun can be concealed under a large shirt or coat . . . . [T]he combination of low, somewhat indiscriminate accuracy, large destructive power, and the ability to conceal . . . makes a sawed-off shotgun useful for only violence against another person, rather than, for example, against sport game."); *Bezet v. United States*, 276 F. Supp. 3d 576, 611–12 (E.D. La. 2017), *aff'd*, 714 F. App'x. 336 (5th Cir. 2017) ("Prior to the enactment of the NFA, Congress recognized that the country struggled to control the violence wrought by 'gangsters, racketeers, and professional criminals.'. . . Similarly to the GCA, the NFA was adopted by Congress to establish a nationwide system to regulate the sale, transfer, license, and manufacturing of certain 'dangerous weapons' such as 'machine guns, sawed-off shotguns, sawed-off rifles, and other firearms, other than pistols and revolvers, which may be concealed on the persons, and silencers.' . . . [T]he NFA targets 'certain weapons likely to be used for criminal purposes.'"); *United States v. Gonzalez*, No. 2:10-cr-00967, 2011 WL 5288727, at *5 (D. Utah Nov. 2, 2011) ("Congress specifically found that 'short-barreled rifles are primarily weapons of war and have no appropriate sporting use or use for personal protection.'" (*quoting* S. Rep. No. 90-1501, at 28 (1968))).

This includes rifles having a barrel or barrels less than 16 inches in length (also known as "short-barreled rifles") and shotguns having a barrel or barrels less than 18 inches in length (also known as "short-barreled shotguns."). Under the NFA and implementing regulations, the term "rifle" is defined to mean "a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger and shall include any such weapon which may be readily restored to fire a fixed cartridge." 26 U.S.C. 5845(c); 27 CFR 479.11. In addition to the NFA requirements, the GCA also imposes specific restrictions on the transportation, sale, and delivery of "short-barreled rifles" and "short-barreled shotguns." 18 U.S.C. 922(a)(4), (b)(4). Therefore, FATD's classifications of a particular firearm allow industry members to plan, develop, and distribute products in compliance with the law, thereby reducing their risk of incurring criminal or civil penalties, or the potential for costly corrective actions, including a possible recall by the manufacturer.

Generally, when FATD evaluates a submitted firearm sample, it examines its overall configuration, physical characteristics, and objective design features that are relevant under the statutory definitions of the GCA and NFA, and any other information that directly affects the classification of a particular firearm configuration as presented by that sample. The numerous configurations, materials, and designs of modern firearms require thorough examination and consideration to ensure proper classification. Even though firearms may have a similar appearance (*i.e.*, shape, size, etc.), an ATF classification of a firearm pertains only to the particular sample submitted because of the vast variations in submissions, the application of different relevant statutes and judicial

interpretations of these statutes, the manufacturer's or maker's stated intent,[6] and the objective design features supporting or undercutting that stated intent that may be legally and technically significant.

In recent years, some manufacturers have produced and sold devices ("stabilizing braces") designed to be attached to large or heavy pistols and that are marketed to help a shooter "stabilize" his or her arm to support single-handed firing. The first individual to submit a forearm brace to determine if it changed the classification of a "pistol" advised ATF that "the AR15 pistol is very difficult to control with the one-handed precision stance due to the forward weight of the weapon and the recoil of the 5.56, 7.62 or 7.62[sic]x39 NATO caliber rounds."[7] There, the submitter explained that the intent of the brace was to facilitate one-handed firing of the AR-15 pistol for those with limited strength or mobility due to a disability, and to reduce bruising to the forearm when firing with one hand. According to this individual, the brace concept was inspired by the needs of combat veterans with disabilities who still enjoy recreational shooting but could not reliably control heavy pistols without assistance. However, whereas some accessories marketed as "stabilizing braces" may make it easier for a person to fire a weapon with one hand and would not result in a determination that the firearm with the attached brace is a "rifle," there are other accessories also marketed as "stabilizing braces" that may be attached to a weapon platform for the purpose of circumventing the GCA and NFA prohibitions on the sale, delivery, transportation, or unregistered possession and taxation

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[6] *See Sig Sauer, Inc. v. Brandon*, 826 F.3d 598 (1st Cir. 2016) (noting that, in the firearms classification context, it is appropriate for ATF to consider "a part's design features . . . as part of the inquiry into" the intended use of that part). The court noted that "[s]uch an objective approach to ferreting out a party's intent is a very familiar one in the law. *See, e.g.*, *United States v. Siciliano*, 578 F.3d 61, 77 (1st Cir. 2009) (noting that objective evidence is useful to 'buttress or rebut direct testimony as to intent'); *cf. Washington v. Davis*, 426 U.S. 229, 253, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976) (Stevens, J., concurring) ('Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor.'); *United States v. Gaw*, 817 F.3d 1 (1st Cir. 2016) ('[T]he law is long since settled that the prosecution may prove its case without direct evidence of a defendant's guilty knowledge so long as the array of circumstantial evidence possesses sufficient persuasive power.' (quoting *United States v. O'Brien*, 14 F.3d 703, 706 (1st Cir. 1994))).''

[7] Classification request from NST Global LLC (Nov. 8, 2012).

of "short-barreled rifles." As described below, the addition of an accessory that is marketed as a "stabilizing brace" to a pistol does not guarantee that the resulting firearm will still be classified as a pistol. Indeed, classifying a firearm based on a limited or singular characteristic (*i.e.* the marketing label of the manufacturer that the item is a "stabilizing brace), "has the potential to be significantly overinclusive or underinclusive."[8]

Because short-barreled rifles are among the firearms considered unusual and dangerous, subjecting them to regulation under the NFA, it is especially important that such weapons be properly classified. Indeed, firearms with "stabilizing braces" have been used in at least two mass shootings, with the shooters in both instances reportedly shouldering the "brace" as a stock, demonstrating the efficacy as "short-barreled" rifles of firearms equipped with such "braces."[9]

The GCA and NFA regulate "firearms" and, with limited exceptions, do not regulate individual components. Accordingly, ATF does not classify unregulated components or accessories alone under the GCA and NFA.[10] However, components or accessories, when attached to a firearm, can affect the classification of a firearm because: (1) a component's or an accessory's likely use may be relevant in assessing the manufacturer's or maker's purported intent with respect to the design of a firearm; and (2) the design of a component or an accessory may result in a firearm falling within a particular statutory definition. Examples include: (1) the attachment of a forward

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[8] *Innovator Enters., Inc. v. Jones*, 28 F. Supp. 3d 14, 25 (D.D.C. 2014).

[9] *See, e.g.*, Cameron Knight, *Dayton shooter used a modified gun that may have exploited a legal loophole* USA Today (published Aug. 5, 2019, updated Aug. 6, 2019) https://www.usatoday.com/story/news/nation/2019/08/05/dayton-shooter-used-gun-may-have-exploited-legal-loophole/1927566001/ (the firearm used in a shooting killing 9 people and wounding 14 had a "pistol brace" used to "skirt[]" regulation of short-barrel rifles); Melissa Macaya *et al*., *10 killed in Colorado grocery store shooting*, CNN (updated Mar. 23, 2021), https://www.cnn.com/us/live-news/boulder-colorado-shooting-3-23-21/h_0c662370eefaeff05eac3ef8d5f29e94 (reporting that the firearm used in a shooting that killed 10 was an AR-15 pistol with an "arm brace").

[10] ATF does, however, make these types of classifications under the Arms Export Control Act ("AECA"), 22 U.S.C. 2778, with respect to the permanent importation of "defense articles."

secondary grip[11] to a "pistol," where the resulting firearm would no longer be designed to be held and fired with a single hand; and (2) a wallet holster[12] where the handgun can be fired while inserted, thus changing the classification of these handguns into an "any other weapon." *See* 26 U.S.C. 5845(e). A "stabilizing brace," of which there are several variations, is yet another example of a component or an accessory that may change the classification of the firearm to which it is attached.

ATF's longstanding and publicly known position is that a firearm does not evade classification under the NFA merely because the firearm is configured with a device marketed as a "stabilizing brace" or "arm brace."[13] When a purported "stabilizing brace" and an attached weapon's objective design features indicate that the firearm is actually designed and intended to be fired from the shoulder, such weapon may fall within the scope of the NFA, requiring registration and payment of tax. Accordingly, ATF must evaluate on a case-by-case basis whether a particular firearm configured with a "stabilizing brace" bears the objective features of a firearm designed and intended to be fired from the shoulder and is thus subject to the NFA. The use of a purported "stabilizing brace" cannot be a tool to circumvent the NFA (or the GCA) and the prohibition on the unregistered possession of "short-barreled rifles."

As the purpose of the NFA is "to regulate certain weapons likely to be used for criminal purposes," *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517 (1992), ATF cannot ignore the design features of a firearm that place it within the scope of the NFA's regulation. This is the case even when a manufacturer characterizes or

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[11] *See U.S. v. Black*, 739 F.3d 931, 934–36 (6th Cir. 2014).
[12] *See FFL Newsletter*, August 1997, at 5–6 (https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensees-newsletter-%E2%80%93-august-1997/download).
[13] *See* ATF, Open Letter on the Redesign of "Stabilizing Braces," (Jan. 16, 2015); and a letter to industry counsel clarifying the 2015 Open Letter, Letter for Mark Barnes, Counsel to SB Tactical, LLC, from Marvin G. Richardson, Assistant Director, ATF Enforcement Programs & Services, 90000:GM, 5000, *Re: Reversal of ATF Open Letter on the Redesign of "Stabilizing Braces"* (Mar. 21, 2017) (made widely available to the public on various websites, for example, see https://johnpierceesq.com/wp-content/uploads/2017/03/ATF-Letter-March-21-2017.pdf and https://www.sigsauer.com/wp-content/uploads/2017/04/atf-letter-march-21-2017.pdf).

markets a firearm accessory in a manner that suggests a use that does not correspond to its objective design. The characterization of an accessory by the manufacturer, including assertions in advertising, is not dispositive. If ATF's evaluation of a submitted sample demonstrates that the objective design features of the firearm, as configured, do not support the manufacturer's purported intent and, in fact, suggest an altogether different intent, ATF will classify the firearm based on the objective design features, as Federal law requires. *See Sig Sauer, Inc. v. Brandon*, 826 F.3d 598, 601–02 (1st Cir. 2016).

It is estimated that manufacturers of stabilizing braces have sold 3 million stabilizing braces since 2013. ATF has observed that the development and production of rifled barrel weapons with "stabilizing braces" has become more prevalent in the firearms industry and that, consequently, requests for classifications for this kind of firearm design have also increased. ATF has classified several firearms equipped with "stabilizing braces" and the objective features used to make these classifications have been described in letters to the industry as well as in criminal cases. However, ATF has received criticism for not more widely publishing the criteria and for not publishing a definitive approach in the application of that criteria. Therefore, to aid the firearms industry and public in understanding the criteria that FATD considers when evaluating firearm samples that are submitted with an attached "stabilizing brace" or similar component or accessory, ATF proposes a worksheet to be entitled Factoring Criteria for Rifled Barrel Weapons with Accessories[14] commonly referred to as "Stabilizing Braces," ATF Worksheet 4999 ("Worksheet 4999"). The purpose of this worksheet is to allow individuals or members of the firearms industry to evaluate whether a weapon

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[14] As used in this rule and worksheet, the term "accessory" is intended as a general term to describe the marketing of items commonly known as "stabilizing braces" and does not affect any ATF determinations whether such items when attached to a handgun are, in fact, "accessories" not necessary for the operation of the handgun, but which enhance its usefulness or effectiveness, or whether they are component parts necessary to properly operate a weapon, such as a rifle. Furthermore, use of that term does not affect any determinations whether such items are "defense articles" under the Arms Export Control Act. Please direct all inquiries as to possible liability for the firearms and ammunition excise tax, 26 U.S.C. 4181–82, to the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau ("TTB").

incorporating a "stabilizing brace" that they intend to submit to FATD or offer for sale will be considered a "short-barreled rifle" or "firearm" under the GCA and NFA. FATD will use the criteria within ATF Worksheet 4999 and resulting point value when evaluating and classifying a submitted firearm.

These criteria and worksheet do not apply to firearms with a smooth bore that use shotgun ammunition. These types of firearms, commonly referred to as "pistol grip shotguns," were never designed to be fired from one hand (*e.g.*, Mossberg Shockwave, Remington Tac-14). ATF has always classified these weapons as GCA "*firearms*," not shotguns or pistols, as they do not incorporate a stock, like a shotgun, and are not designed to be fired from one hand, like a pistol. Thus, the addition of a "stabilizing brace" does not assist with single-handed firing, but rather redesigns the firearm to provide surface area for firing from the shoulder.

II. Application of ATF Worksheet 4999

Similar to the Factoring Criteria for Weapons, ATF Form 4590 ("Form 4590"), which is used for the importation of pistols and revolvers, the proposed ATF Worksheet 4999 has a point system assigning a weighted value to various characteristics of the fully assembled firearm as configured when submitted for classification. A firearm that accumulates less than 4 points in Section II (Accessory Characteristics), and less than 4 points in Section III (Configuration of Weapon), will generally be determined not to be designed to be fired from the shoulder, unless there is evidence that the manufacturer or maker expressly intended to design the weapon to be fired from the shoulder. A firearm that accumulates 4 points or more in Section II or Section III will be determined to be designed and intended to be fired from the shoulder.

As a preliminary factor when evaluating a submitted sample, certain prerequisites (*i.e.*, weapon weight and overall length) will be applied to determine if the firearm will even be considered as a possible pistol or immediately determined to be a rifle, as defined

by the applicable statutes. As discussed, "stabilizing braces" were originally marketed as intended to assist persons with disabilities and others lacking sufficient grip strength to control heavier pistols. Therefore, attaching a "stabilizing brace" to a typical pistol, where no assistance is necessary, or attaching one to a firearm so heavy or difficult to control that one-handed shooting is impractical or inaccurate, regardless of the manufacturer's stated intent, will change the design of the firearm into a rifle intended to be fired from the shoulder. Indeed, the purported "stabilizing brace" would have no design function other than to facilitate the firing of the weapon from the shoulder.

On the proposed Worksheet 4999, objective design characteristics or features that are common to rifles, features associated with shoulder stocks, and those features limiting the ability to use the "stabilizing brace" as an actual brace are assigned point values. These point values range from 0 to 4 points based upon the degree of the indicator, explained as follows:

- 1 point: Minor Indicator (the weapon *could* be fired from the shoulder)
- 2 points: Moderate Indicator (the weapon *may* be designed and intended to be fired from the shoulder)
- 3 points: Strong Indicator (the weapon *is likely* designed and intended to be fired from the shoulder)
- 4 points: Decisive Indicator (the weapon *is* designed and intended to be fired from the shoulder)

As in ATF Form 4590, the point values associated with particular features or designs are based upon their relative importance in classifying the firearm under the law. In this case, design factors that are more likely to demonstrate a manufacturer's or maker's intent to produce a "short-barreled rifle" and market it as a "braced pistol" accrue more points than those that reveal less evidence. There are certain inherent features that may support a design as a "stabilizing brace" and also a shoulder stock. For

example, a large amount of surface area on the rear of a purported "stabilizing brace" may indicate that it is designed to be fired from the shoulder and facilitate its use as a shoulder stock. However, that characteristic may also be the result of incorporating substantial stabilizing support that envelopes the shooter's arm (*e.g.*, the original SB15 "stabilizing brace"), allowing one-handed firing of a large pistol. These complexities cannot serve merely to exempt all firearms with purported "stabilizing braces" from classification as "rifles." Indeed, the statutory definitions of "rifle" in the GCA and NFA describe that type of weapon as one "intended to be fired from the shoulder." 18 U.S.C. 921(a)(7); 26 U.S.C. 5845(c). The ATF Worksheet 4999 is necessary to enforce the law consistently, considering the diversity of firearm designs and configurations.

As stated above, if the total point value of the firearm submitted is equal to or greater than 4—in either Section II or III—then the firearm, with the attached "stabilizing brace," will be determined to be "designed or redesigned, made or remade, and intended to be fired from the shoulder," or a "rifle" under the GCA and NFA. The firearm will be classified as a "short-barreled rifle" under the GCA and NFA, and as an NFA "firearm," if the attached barrel is also less than 16 inches. The ATF Worksheet 4999 will provide the public and the firearms industry with a detailed methodology for ensuring legal compliance.

By using ATF Worksheet 4999, ATF is ensuring uniform consideration and application of these criteria when evaluating firearm samples with attached "stabilizing braces." ATF also notes that some makers or manufacturers have received a classification of a "stabilizing brace" without it being attached to a firearm or may have received a classification for a firearm that would be considered a NFA firearm under these criteria. Therefore, any maker or manufacturer who has received a classification prior to the effective date of the rule is encouraged to resubmit the firearm with the attached "stabilizing brace" to ensure that the prior classification is consistent with this

new rule and to avoid any possible criminal or tax penalties for the continued manufacture, transfer, or possession of a NFA firearm. As iterated above, FATD's classifications allow industry members to plan and develop products that comply with the law, and thereby reduce their risk of incurring criminal or civil penalties, or the need for corrective actions, including a recall by the manufacturer. ATF recognizes that these factors may affect industry members and members of the public, as they may manufacture or already own firearms with a "stabilizing brace" attached. ATF wants to assist affected persons and industry members and provides the additional information in this proposed rule to aid them in complying with Federal laws and regulations.

III. Proposed Rule

Given the public interest surrounding these issues, ATF is proposing to amend the definition of "rifle" in 27 CFR 478.11 and 479.11, respectively, by adding a sentence at the end of each definition. The new sentence would clarify that the term "rifle" includes any weapon with a rifled barrel and equipped with[15] an attached "stabilizing brace" that has objective design features and characteristics that indicate that the firearm is designed to be fired from the shoulder, as indicated on ATF Worksheet 4999.

Because the objective design features and characteristics considered will be on a new worksheet to be used by ATF, the Department is also publishing this proposed worksheet—ATF Worksheet 4999—as part of the preamble to this proposed rule and inviting interested members of the public and industry to provide comment. Similar to ATF Form 4590, used to determine if a firearm is sporting for purposes of importation, ATF proposes to use ATF Worksheet 4999 to determine if a firearm is designed and intended to be fired from the shoulder, as follows:

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[15] *Cf., e.g.*, *United States v. Charles*, 469 F.3d 402, 407–08 (5th Cir. 2006) (analyzing whether there was sufficient evidence that a firearm was "equipped with" a silencer); *United States v. Thompson*, 82 F.3d 849, 851–53 & n.5 (9th Cir. 1996) (discussing when a firearm may be "equipped with" a silencer); *United States v. Rodriguez*, 53 F.3d 545, 546 (2d Cir. 1995) (analyzing whether a firearm was "equipped with" a silencer).

Proposed Factoring Criteria for Rifled Barrel Weapons with Accessories commonly referred to as "Stabilizing Braces"

U.S. DEPARTMENT OF JUSTICE

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

FACTORING CRITERIA FOR RIFLED BARREL WEAPONS WITH ACCESSORIES* commonly referred to as "STABILIZING BRACES"

SUMMARY: This chart lists the factors ATF considers when evaluating a firearm with an accessory (commonly referred to as a "stabilizing braces") for classification under the National Firearms Act (NFA) or the Gun Control Act (GCA).

NOTE: 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.

*As used in this worksheet, the term "accessory" is intended as a general term to describe the marketing of items commonly known as "stabilizing braces" and does not affect any ATF determinations whether such items when attached to a handgun are, in fact, "accessories" not necessary for the operation of the handgun, but which enhance its usefulness or effectiveness, or whether they are component parts necessary to properly operate a weapon, such as a rifle. Furthermore, use of that term does not affect any determinations whether such items are "defense articles" under the Arms Export Control Act. Please direct all inquiries as to possible liability for the firearms and ammunition excise tax, 26 U.S.C. sections 4181-4182 to the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB).

Weapon:			Explanation:
Manufacturer/Model			
SECTION I - PREREQUISITES			[Suitability of "Brace" use]
1. The weapon must weigh at least 64 ounces.			* Weighed with magazine - unloaded / accessories removed
2. The weapon must have an overall length between 12 and 26 inches.			* Length measured with all non-operational accessories removed
Weapon must meet both Prerequisites in order to proceed to Section II.			
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB TOTAL	
SECTION II - Accessory Characteristics			[Determination of use as a "Brace" vs. Stock]
ACCESSORY DESIGN			
Not based on a known shoulder stock design	0		
Incorporates shoulder stock design feature(s)	1		
Based on a known shoulder stock design	2		
REAR SURFACE AREA			
Device incorporates features to prevent use as a shouldering device	0		
Minimized Rear Surface lacking features to discourage shouldering	1		
Rear Surface useful for shouldering the firearm	2		
Material added to increase Rear Surface for shouldering	3		
ADJUSTABILITY			
Non-adjustable, fixed design	0		
Adjustable or telescoping attachment designed for shouldering	2		
STABILIZING SUPPORT			
Counterbalance Design - Non-Folding	0		
Counterbalance Design that Folds creating Rear Contact Surface	1		
OR:			
"Fin- type" design **WITH** Arm Strap	0		
"Fin- type" design **WITHOUT** Arm Strap	2		
OR:			
"Cuff-type" design that **FULLY** wraps around arm	0		
"Cuff-type" design that **PARTIALLY** wraps around arm	1		
"Cuff-type" design that **FAILS** to wrap around arm	2		
"Split-stock" configuration not designed to wrap around shooter's arm	3		
SECTION II SCORE ACHIEVED:		**SCORE**	
Section II Must Score LESS than 4 in order to proceed to Section III			
			ATF WORKSHEET 4999 (5330.5) (5-21)

SECTION III - Configuration of Weapon			[Determination if weapon is shoulder fired]
LENGTH OF PULL - w/Accessory in Rear most "Locked Position"			* Measured from the center of the trigger to the center of the
Less than 10-1/2 Inches	0		shoulder device / "stabilizing brace"
10-1/2 but under 11-1/2 Inches	1		
11-1/2 but under 12-1/2 Inches	2		
12-1/2 but under 13-1/2 Inches	3		
13-1/2 Inches and Over	4		
ATTACHMENT METHOD			
Standard AR-type Pistol Buffer Tube (6-6-1/2 Inches)	0		
AR-type Pistol Buffer Tube with Adjustment Notches (KAK-type)	1		
Adjustable Rifle Buffer Tube	1		
Adjustable PDW-type guide rails	1		
Extended AR-type Pistol Buffer Tube	2		
Inclusion of Folding Adapter extending length of pull	2		
Use of "Spacers" to extend length of pull	2		
Modified shoulder stock with rear replaced by "stabilizing brace"	3		
Attachment method creates an unusable aim-point (slant)	3		
"STABILIZING BRACE" MODIFICATIONS / CONFIGURATION			
"Cuff-type" or "fin-type" design with strap too short to function	2		
"Cuff-type" or "fin-type" design with strap made out of elastic material	2		
"Fin-type" lacking an arm strap	2		
"Cuff-type" design with strap **REMOVED**	4		
"Brace" accessory modified for shouldering	4		
Modified Shoulder Stock (originally a Shoulder Stock)	4		
PERIPHERAL ACCESSORIES			
Presence of a Hand Stop	2		
Presence of a Secondary Grip (indicating two-handed fire)	4		
Presence of Rifle-type Back-up / Flip-up Sights / Or no sights	1		
Presence of Reflex Sight with FTS Magnifier w/ Limited Eye-Relief	2		
Presence of a Sight/Scope with Eye Relief Incompatible with one-handed fire	4		
Presence of a bipod / monopod	2		
Weapon as configured weighing more than 120 ounces	4		* Weighed with magazine - unloaded
SECTION III SCORE ACHIEVED:		**SCORE**	
(A SCORE OF 4 POINTS OR MORE INDICATES A SHOULDER-FIRED DESIGN)			
CLASSIFICATION:			***Rifle or "Braced" Handgun***
			ATF WORKSHEET 4999 (5330.5) (5-21)

Section I. Prerequisites

As a preliminary factor when evaluating a submitted sample, certain prerequisites will be applied to determine if the firearm, without the attached "stabilizing brace," will even be considered a suitable weapon for the brace. As described above, "stabilizing braces" were originally marketed as being designed to assist persons with disabilities and others lacking sufficient grip strength to control heavier pistols. Accordingly, FATD will first examine the submitted sample's weapon weight and overall length.

Weapon Weight. Weapon weight is a key prerequisite in determining whether a "stabilizing brace" is appropriately used on a weapon. A traditional unloaded 1911-type pistol weighs approximately 39 ounces. Similarly, the polymer Glock 17 weighs 39

ounces when fully loaded. Weighing just over 2 pounds, these firearms are easily held and fired with one hand without the need for a "stabilizing brace," as such "braces" are designed. This stands in contrast to the weight of the type of pistols or other firearms for which the "stabilizing brace" was designed to be attached. The AR-type pistol, a popular large handgun design, for example, weighs approximately 5 to 7 pounds (*i.e.*, 80 ounces to 112 ounces) based on its configuration. Such weight is more difficult to manipulate and to keep on target, indicating the "stabilizing brace" is in fact intended to assist one-handed fire. Based on the weights stated above, firearms weighing less than 64 ounces/4 pounds (weighed with unloaded magazine and accessories removed) are not considered weapons suitable for use with a "stabilizing brace" accessory because they are more easily held and fired with one hand without the need for a "stabilizing brace."

Overall Length. The overall length of a weapon is relevant in classifying it as a "rifle" or a "pistol" because, as a firearm becomes excessive in length, it is increasingly difficult to fire with one hand. The AR-type pistol has an overall length between 18 and 25 inches, depending on barrel length (due to the necessary inclusion of the buffer tube). Other large frame pistols range between 14 and 22 inches, such as the AK-type DRACO, HK SP5, and CZ Scorpion EVO. Firearms possessing an overall length between 12 and 26 inches may be considered pistols for which a "stabilizing brace" could reasonably be attached to support one-handed fire. Firearms with an overall length of less than 12 inches are considered too short to indicate any need for a "stabilizing brace." Conversely, firearms exceeding 26 inches in overall length are impractical and inaccurate to fire one handed, even with a "stabilizing brace," due to imbalance of the weapon.

Section II. Accessory Characteristics

Ife the submitted firearm sample meets the prerequisites of weighing at least 64 ounces and having an overall length between 12 and 26 inches, FATD will analyze various attachment characteristics. For FATD to determine that a weapon with an

attached "stabilizing brace" is not, in fact, designed and intended to be fired from the shoulder, the accessory must not have the characteristics of a shoulder stock. These characteristics are as follows:

Accessory Design. The design of the accessory when attached is a factor in determining whether the item is actually a "stabilizing brace" or is intended to be utilized as a stock, making the firearm designed to be fired from the shoulder. Specifically, because the NFA or GCA could be circumvented by substituting a "stabilizing brace" for a traditional shoulder stock on a "short-barreled rifle" ("stabilizing braces" sometimes share close similarities with known stocks), the more features a purported "stabilizing brace" has in common with known shoulder stock designs, the more points it will accumulate. "Stabilizing braces" that are not based on any known shoulder stock design will accrue zero points. "Stabilizing braces" that incorporate one or more shoulder stock design features (*e.g.*, adjustment levers or features that allow for the length of the device to be varied in a manner similar to an adjustable shoulder stock, sling mounts[16], or hardened surfaces) will accrue 1 point. Lastly, "stabilizing braces" that are modified versions of known shoulder stock designs will accrue 2 points.

Rear Surface Area. Rear surface area is a design characteristic referring to the area on the rear of the purported "stabilizing brace." Since the purpose of a "stabilizing brace" is to be secured to a shooter's forearm, there is no advantage for a manufacturer of "stabilizing braces" to include substantial surface area on the rear of the design unless the brace is attached to a firearm in order to redesign it to be fired from the shoulder. As with the other design characteristics, rear surface area is a consideration that must be evaluated in light of the overall design. Clearly, larger, more substantial "stabilizing braces" may have more surface area in which to shoulder a firearm. However, while

[16] The location of a sling or quick detach (QD) mount is an indicator as to the intended use of the accessory. A sling attachment at the rear of the device could be a deterrent from shouldering the weapon, whereas some accessories incorporate QD mounts consistent with known shoulder stock designs.

smaller, less substantial "stabilizing brace" designs may have reduced surface area, this shouldering area may still be similar to known shoulder stock designs upon which they are based. The reduced contact area of the flaps to the shooter's forearm, and the surface area necessary to shoulder the weapon work in tandem to indicate whether the purported "stabilizing brace" is, in fact, a shouldering device.

Any "stabilizing brace" that incorporates a surface area feature that clearly makes it difficult to use as a shouldering device will accrue zero points. A "stabilizing brace" accessory that is designed with only a minimal rear surface area (*e.g.*, a "fin-type") with which a weapon could possibly be shouldered will accrue 1 point. A "stabilizing brace" accessory that is designed with a rear surface area sufficient to shoulder the firearm, or approximating the rear surface of known shoulder stocks, which allows shouldering the firearm, will accrue 2 points. Finally, a "stabilizing brace" accessory that features material clearly designed to increase rear surface area to facilitate shoulder firing will accrue 3 points.

Adjustability. When ATF was first asked to classify an adjustable "stabilizing brace," it responded that adjustability is "a feature commonly associated with butt stocks/shoulder stocks as well as firearms designed and intended to be fired from the shoulder."[17] Although ATF ultimately determined that adjustability, in and of itself, is not determinative of a "stabilizing brace's" design function on a firearm, it remains a significant indicator that the device is designed and intended to be shouldered. Weapons that do not incorporate an adjustable "stabilizing brace" will accrue zero points, while "stabilizing brace" designs that are adjustable will accrue 2 points.

Stabilizing Support. To be effective, a "stabilizing brace" must provide support for the weapon through sufficient and stable contact with the shooter's forearm. Original "stabilizing brace" designs used a substantial amount of hardened material intended to

[17] *See* FTISB Letter 303984, at 3 (Nov. 30, 2015).

contact a significant portion of the shooter's forearm, and a strap to secure the device and limit movement. Later iterations substantially reduced these design features, mimicking the outline of low-profile (*i.e.*, slim design) shoulder stocks. These later designs resulted in less contact with the forearm and instead rely heavily upon a Velcro strap to perform the function of the more substantial flaps present in earlier designs. While the strap may be used to tighten the minimal polymer flaps on top of the arm, these later designs were far less effective at providing stabilizing support—in contrast to the originally stated intent—and increase bruising to the forearm when firing with one hand. These later designs were also similar to the tactical shoulder stocks widely advertised and sold in the marketplace.

Stabilizing support is a vital characteristic because it provides evidence to evaluate the purported purpose of the attached device, which is to provide shooters with forearm support for firing large, heavy handguns. It is therefore important for ATF to consider the various "stabilizing brace" designs and the forearm support they provide. ATF has categorized these different "stabilizing brace" designs into three broad categories: Counterbalance, "Fin-type", and "Cuff-type."

Counterbalance designs[18] utilize the weight of the weapon as a lever to push the "stabilizing brace" into the forearm and provide stability for firing. These designs do not typically include a strap because the "stabilizing brace" itself contacts the side and bottom of the shooter's arm and is held in place by the weight of the firearm, using the shooter's hand as the fulcrum. However, whether characterized as a method of storage or otherwise, there is no forearm stabilizing purpose in a Counterbalance design that folds closed such that it can no longer be used as a "stabilizing brace." Indeed, this type of design may create rear surface area such that the "stabilizing brace" may be suitable only as a shoulder stock when closed. The folding feature of the Counterbalance design stands

[18] *See, e.g.*, US Patent 10,690,442 B2 June 23, 2020.

in contrast to the purported intent of the device. This feature presents some evidence that a firearm equipped with a Counterbalance "stabilizing brace" is intended to be fired from the shoulder and therefore will accrue 1 point.

"Fin-type" designs incorporate a thin "blade" designed to rest against the shooter's arm, and feature a minimal, thin rear surface area. Although originally submitted with the explanation that these devices would incorporate an arm strap or that a sling could be wrapped around the shooter's arm and provide additional support,[19] the majority of these accessories are now marketed and sold without such a strap, thus virtually eliminating their effectiveness as a "stabilizing brace." "Fin-type" accessories that do not incorporate an arm strap of suitable length or functionality will accrue 2 points, while those that incorporate an arm strap long enough to secure a person's forearm consistent with the purported intent will not accrue any points (zero).

"Cuff-type" designs are by far the most prevalent of all "stabilizing braces," consisting of over two dozen different unique designs. "Cuff-type" "stabilizing braces" have evolved over the past decade, from non-adjustable, large articles into compact designs, clearly based on, or modified from, shoulder stocks. "Cuff-type" "stabilizing braces" vary greatly in design and the classification of firearms with these types of "stabilizing braces" is the most complex of the three categories. The original "cuff-type" designs incorporated large "arm flaps" to fully envelop the forearm and also a strap to limit movement of the cuff by tightening it. These designs were contoured so that a shooter's forearm could easily fit through the cuff and the strap would tighten around the cuff to provide additional arm support. These designs were clearly devised to secure the firearm to the shooter's forearm and were effective in doing so. Therefore, a "cuff-type" "stabilizing brace" that fully wraps around the shooter's forearm (*e.g.*, SB15/SBX-K) will not accrue any points (zero).

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[19] See FTISB Letter 302672 (Sept. 8, 2014).

Later designs of the "cuff-type" braces possessed arm flaps that lacked contouring and did not provide a suitable opening for the shooter's forearm. These designs relied on softer materials that, while saving on production costs, mimicked the design of popular shoulder stocks and did not provide the same support for single-handed firing of large handguns. These designs could be secured to the shooter's forearm, but the brace rested on top of the arm, and relied on the Velcro strap to secure the firearm to the shooter's arm. Because they are less effective at the stated purpose of stabilizing one-handed firing, it is appropriate that weapons with such devices attached accrue points as these are more evidently designed and intended for another purpose, which is to be fired from the shoulder. Such "cuff-type" "stabilizing braces" that partially wrap around the shooter's forearm (*e.g.*, SOB/SB-Mini) will accrue 1 point. Finally, those "stabilizing braces" incorporating arm flaps that do not wrap around the shooter's forearm (*e.g.*, SBA3/SB-PDW), thereby providing no arm support, will accrue 2 points.

Further, with the later "split stock" design, which is another "cuff-type" design where the flaps lack arm contouring, "stabilizing brace" developers simply used known or existing stocks, added a slot down the center of the stock, or otherwise slightly altered the original shoulder stock design and contended that these were "stabilizing braces" like any other "cuff-type" design. However, the purpose of such designs is clearly indicated by the fact that they are far more effective when utilized as a shoulder stock than a "stabilizing brace." These types of "stabilizing braces" are difficult to attach to the arm, provide minimal support in one-handed shooting, and are not effective to use as a "stabilizing brace." As such, any "stabilizing brace" that is configured as a "split-stock" (*e.g.*, SBT/FS1913) will accrue 3 points.

Section III. Configuration of Weapon

This section will be used to evaluate the entire weapon including how the "stabilizing brace" is mounted to the firearm as well as the effectiveness of the brace in

single-handed firing as opposed to firing from the shoulder. It will also consider all of the accessories that have been added to affect firing that will be used in conjunction with the "stabilizing brace."

Length of Pull. Length of pull is a common measurement of firearms that describes the distance between the trigger and the center of the shoulder stock. This is a measurement that may be used to fit a firearm to a particular shooter. Generally, taller shooters require a longer length of pull and shorter shooters require a shorter length of pull. Adjustable shoulder stocks are commonly available. Patents, advertising material, and other resources make clear that adjustability is meant to facilitate changing the length of pull.[20] Such length of pull measurements are far less relevant when a pistol is involved because a shooter merely requires a device that reaches from the back of the firearm to the forearm. Far less variation exists between shooters in this way. A firearm with a "stabilizing brace" will accrue more points the further it is positioned rearward, indicating that it is intended for use as a shouldering device. Firearms with "stabilizing braces" that incorporate a length of pull of less than 10-1/2 inches will not accrue any points (zero). However, a length of pull that is between 10-1/2 but under 11-1/2 inches will accrue 1 point, while 11-1/2 but under 12-1/2 will accrue 2 points, 12-1/2 but under 13-1/2 will accrue 3 points, and a length of pull of 13-1/2 inches or more will accrue 4 points as this is a standard length of pull for rifles and is a decisive indicator that the firearm is intended to be fired from the shoulder.

Attachment Method. A "stabilizing brace's" attachment method often provides critical insight as to how a firearm is intended to be used. "Stabilizing braces" attached to a standard-length AR-type pistol buffer tube (extending 6 to 6-1/2 inches from the rear

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[20] *See, e.g.*, U.S. Patent 7,762,018 B1 (July 27, 2010) (in which invention "provides structure for mounting the stock body and contains structure for the pre-set system utilized by stock bodies which are adjustable for length. The length of pull system comprises a series of pre-drilled threaded holes 56, which are off-set from a center axis . . . .").

of the firearm) will not accrue any points (zero). Use of an AR-type pistol buffer tube with adjustment notches, an adjustable rifle buffer tube, or an adjustable PDW-type guide rail, will accrue 1 point as each indicates the ability to adjust the "stabilizing brace." An extended AR-type pistol buffer tube (greater than 6-1/2 inches), folding adaptors, and the use of "spacers" are all indicators that the "brace" is being positioned to serve as a shouldering device because it increases the "length of pull," thereby allowing a shooter to fire the weapon from the shoulder. Therefore, such firearm will accrue 2 points. Additionally, a shoulder stock that has been modified to incorporate a "stabilizing brace," or any attachment method that results in an unusable aim-point when the "stabilizing brace" is attached is also a strong indicator the weapon is actually intended to be shoulder fired and will accrue 3 points.

"Stabilizing Brace" Modifications/Configuration. "Stabilizing brace" accessories that have been modified from their original configuration will accrue additional points. Any "cuff-type" or "fin-type" accessory, which incorporates an arm strap too short to wrap around the shooter's arm or is manufactured from an elastic material (eliminating stabilizing support), will accrue 2 points, as will a "fin-type" accessory lacking an arm strap. Further, if these modifications reconfigure the device into a shoulder stock, 4 points will be accrued. These modifications could include taping or strapping the arm flaps together on a "cuff-type" "stabilizing brace," or adding shouldering surface to a "fin-type" "stabilizing brace."

Peripheral Accessories. ATF has examined multiple firearms that include peripheral accessories, often added by the end user, that indicate the weapon is not designed and intended to be held and fired by a single hand. Such accessories include secondary grips, hand-stops, flip-up rifle-type sights, sights/scopes with limited eye-relief, and bipod/monopods.

Certain hand-stop attachments have been determined to protect a shooter's off-hand from being placed in front of the barrel and do not, in and of themselves, redesign a pistol to be fired with more than one hand. However, the presence of such an attachment is an indication the weapon may not be intended to be fired with a single hand, but rather intended to be fired from the shoulder. As such, the presence of a hand-stop will result in 2 points being accrued. Further, the presence of any secondary grip on a weapon with a "stabilizing brace" accessory changes the classification from a one-handed to a two-handed weapon, thereby disqualifying it from being classified as a "braced pistol," and resulting in the subject firearm accruing 4 points.

Installed sights are also indicators as to the intended use of a firearm with an attached "stabilizing brace." ATF has examined numerous AR-type firearms with "stabilizing brace" accessories that lack any sight or that incorporate rifle-type flip-up or back-up iron sights ("BUIS"), which are only partially usable when firing the weapon with one hand. As such, the presence of this type of sight or lack of any sight will accrue 1 point. Further, firearms that incorporate a reflex sight (*e.g.*, Red Dot) in conjunction with a flip-to-the-side ("FTS") magnifier with limited eye relief (distance between the shooter's eye and rear of sight/scope) will accrue 2 points. Finally, any weapon incorporating a sight or scope that possesses an eye relief (distance between the shooter's eye and rear of sight/scope) incompatible with one-handed firing will accrue 4 points, as this is a decisive indicator that the "stabilizing brace" is being utilized as a shouldering device. For example, a sight would be incompatible with one-handed firing if it cannot be seen clearly when held at arm's length, thus showing the weapon must be shouldered in order for the sight to be used.

Firearms that incorporate or are designed to rest on bipod/monopod accessories generally are not designed and intended to be held and fired by a single hand. Much like hand-stops, bipods/monopods do not necessarily, in and of themselves, change the

classification of a "pistol" when installed. However, bipods/monopods offer "stabilizing support" to the firearms to which they are attached, which is often counter-intuitive to an attached "stabilizing brace," for example, Counterbalance "stabilizing brace" designs. Therefore, attachment of a bipod/monopod will accrue 2 points, regardless of the type of "stabilizing brace" attached.

Finally, any complete firearm with an installed "stabilizing brace" that weighs more than 120 ounces (7-1/2 pounds), incorporating end user accessories, will be considered too heavy to be fired with one hand, and will accrue 4 points. The firearm will be weighed as configured, with an *unloaded* magazine. The upper limit of 120 ounces takes into account that in order to fire the weapon, the shooter will insert a loaded magazine, which will typically add an additional 16–32 ounces. For example, a loaded 30-round AR-type magazine with .223 caliber ammunition weighs approximately 16 ounces (1 pound), while a loaded 30-round AK-type magazine with 7.62x39 caliber ammunition weighs approximately 29 ounces (1.8 pounds). Additionally, a 20-round magazine with .308 Winchester caliber ammunition weighs approximately 23 ounces (1.4 pounds). These are typical types of magazines used with one-handed "stabilized" firing. Firearms may reach a weight where the use of a "stabilizing brace" provides insufficient support for one-handed firing. Indeed, the existence of a "stabilizing brace" on firearms that are too heavy to be "intended to be fired by one hand" indicates that the purported "stabilizing brace" is actually intended as a shouldering device.

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." While some manufacturers have recognized that there is a market advantage in designing and selling "short-barreled rifles" as "pistols" to customers seeking to avoid tax and registration requirements, "stabilizing braces" are not

a method by which the Federal statutes may be circumvented. Therefore, efforts to advertise, sell, or otherwise distribute "short-barreled rifles" as such will result in a classification as a "rifle" regardless of the points accrued on the ATF Worksheet 4999 because there is no longer any question that the intent is for the weapon to be fired from the shoulder.

IV. Application of the Proposed Worksheet to Common "Stabilizing Braces"

For the purpose of explaining how the factoring criteria in Worksheet 4999 would be implemented, ATF applied the Worksheet 4999 to three weapons with common "stabilizing braces" attached: an AR-type firearm with an SB-Mini accessory, an AR-type firearm with an SBA3 accessory, and an AR-type firearm with a Shockwave Blade accessory. The results of that process follow.

A. <u>AR-Type Firearm with SB-Mini Accessory</u>

U.S. DEPARTMENT OF JUSTICE

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

FACTORING CRITERIA FOR RIFLED BARREL WEAPONS WITH ACCESSORIES* commonly referred to as "STABILIZING BRACES"

SUMMARY: This chart lists the factors ATF considers when evaluating a firearm with an accessory (commonly referred to as a "stabilizing braces") for classification under the National Firearms Act (NFA) or the Gun Control Act (GCA).

NOTE: 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.

*As used in this worksheet, the term "accessory" is intended as a general term to describe the marketing of items commonly known as "stabilizing braces" and does not affect any ATF determinations whether such items when attached to a handgun are, in fact, "accessories" not necessary for the operation of the handgun, but which enhance its usefulness or effectiveness, or whether they are component parts necessary to properly operate a weapon, such as a rifle. Furthermore, use of that term does not affect any determinations whether such items are "defense articles" under the Arms Export Control Act. Please direct all inquiries as to possible liability for the firearms and ammunition excise tax, 26 U.S.C. sections 4181-4182 to the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB).

Weapon:			Explanation:
AR-type w/SB-Mini accessory			
SECTION I - PREREQUISITES			[Suitability of "Brace" use]
1. The weapon must weigh at least 64 ounces	**91 ounces**		* Weighed with magazine - unloaded / accessories removed
2. The weapon must have an overall length between 12 and 26 inches	**25-1/8**		* Length measured with all non-operational accessories removed
Weapon must meet both Prerequisites in order to proceed to Section II			
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB TOTAL	
SECTION II - Accessory Characteristics			[Determination of use as a "Brace" vs. Stock]
ACCESSORY DESIGN			
Not based on a known shoulder stock design	0	**0**	
Incorporates shoulder stock design feature(s)	1		
Based on a known shoulder stock design	2		
REAR SURFACE AREA			
Device incorporates features to prevent use as a shouldering device	0		
Minimized Rear Surface lacking features to discourage shouldering	1		
Rear Surface useful for shouldering the firearm	2	**2**	
Material added to increase Rear Surface for shouldering	3		
ADJUSTABILITY			
Non-adjustable, fixed design	0		
Adjustable or telescoping attachment designed for shouldering	2		
STABILIZING SUPPORT			
Counterbalance Design - Non-Folding	0		
Counterbalance Design that Folds creating Rear Contact Surface	1		
OR:			
"Fin- type" design **WITH** Arm Strap	0		
"Fin- type" design **WITHOUT** Arm Strap	2		
OR:			
"Cuff-type" design that **FULLY** wraps around arm	0		
"Cuff-type" design that **PARTIALLY** wraps around arm	1	**1**	
"Cuff-type" design that **FAILS** to wrap around arm	2		
"Split-stock" configuration not designed to wrap around shooter's arm	3		
SECTION II SCORE ACHIEVED:		**3**	
Section II Must Score LESS than 4 in order to proceed to Section III			*** Weapon proceeds to Section III**

ATF WORKSHEET 4999 (5330.5) (5-21)

SECTION III - Configuration of Weapon			[Determination if weapon is shoulder fired]
LENGTH OF PULL - **w**/Accessory in Rear most "Locked Position"			* Measured from the center of the trigger to the center of the
Less than 10-1/2 Inches	0		shoulder device / "stabilizing brace"
10-1/2 but under 11-1/2 Inches	1		
11-1/2 but under 12-1/2 Inches	2	**2**	
12-1/2 but under 13-1/2 Inches	3		
13-1/2 Inches and Over	4		
ATTACHMENT METHOD			
Standard AR-type Pistol Buffer Tube (6-6-1/2 Inches)	0	**0**	
AR-type Pistol Buffer Tube with Adjustment Notches (KAK-type)	1		
Adjustable Rifle Buffer Tube	1		
Adjustable PDW-type guide rails	1		
Extended AR-type Pistol Buffer Tube	2		
Inclusion of Folding Adapter extending length of pull	2		
Use of "Spacers" to extend length of pull	2		
Modified shoulder stock with rear replaced by "stabilizing brace"	3		
Attachment method creates an unusable aim-point (slant)	3		
"STABILIZING BRACE" MODIFICATIONS / CONFIGURATION			
"Cuff-type" or "fin-type" design with strap too short to function	2		
"Cuff-type" or "fin-type" design with strap made out of elastic material	2		
"Fin-type" lacking an arm strap	2		
"Cuff-type" design with strap **REMOVED**	4		
"Brace" accessory modified for shouldering	4		
Modified Shoulder Stock (originally a Shoulder Stock)	4		
PERIPHERAL ACCESSORIES			
Presence of a Hand Stop	2		
Presence of a Secondary Grip (indicating two-handed fire)	4		
Presence of Rifle-type Back-up / Flip-up Sights / Or no sights	1	**1**	
Presence of Reflex Sight with FTS Magnifier w/ Limited Eye-Relief	2		
Presence of a Sight/Scope with Eye Relief Incompatible with one-handed fire	4		
Presence of a bipod / monopod	2		
Weapon as configured weighing more than 120 ounces	4		* Weighed with magazine - unloaded
SECTION III SCORE ACHIEVED: ***(A SCORE OF 4 POINTS OR MORE INDICATES A SHOULDER-FIRED DESIGN)***		**3**	
CLASSIFICATION:			**Pistol with "stabilizing brace"**
			ATF WORKSHEET 4999 (5330.5) (5-21)

SB-Mini Accessory:

Applying the criteria in Section I, the above firearm was determined to weigh approximately 91 ounces and have an overall length of 25-1/8 inches, and thus would be a suitable host firearm for a "stabilizing brace" accessory. In Section II, the firearm would score a total of 3 points. The firearm with attached SB-Mini (sometimes referred to as the SBL-Mini) accessory would score 0 points in Accessory Design for not being based on a known shoulder stock design. In Rear Surface Area, the firearm would accrue 2 points for possessing a rear surface useful for shouldering the firearm. In Adjustability, the firearm would accrue 0 points for not being an adjustable design. Finally, in Stabilizing Support the firearm would accrue 1 point, as the flaps on the "Cuff-type" design only partially wrapped around a shooter's forearm. As the firearm would score 3 points in Section II, it would be able to proceed to Section III.

Under Section III, the firearm would score a total of 3 points. In Length of Pull, the firearm was determined to possess a length of pull of approximately 11-3/8 inches; thereby it would accrue 2 points. In Attachment Method, the firearm would accrue 0 points as the SB-Mini accessory is attached using a standard-length AR-type pistol buffer tube. In the "Stabilizing Brace" Modification category, the firearm was determined to

have no modifications, and would accrue 0 points. Finally, in the Peripheral Accessories, the firearm possessed rifle-type flip-up sights, which would accrue 1 point. As evaluated, no other accessories were installed onto the firearm. The firearm, in this configuration, would score a total of 3 points in this section, and accordingly would be determined not to be designed and intended to be fired from the shoulder. Therefore, since each section is evaluated separately, the firearm, *as submitted*, would be classified as a pistol with an attached "stabilizing brace" accessory.

B. <u>AR-Type Firearm with SBA3 Accessory</u>

U.S. DEPARTMENT OF JUSTICE

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

FACTORING CRITERIA FOR RIFLED BARREL WEAPONS WITH ACCESSORIES* commonly referred to as "STABILIZING BRACES"

SUMMARY: This chart lists the factors ATF considers when evaluating a firearm with an accessory (commonly referred to as a "stabilizing braces") for classification under the National Firearms Act (NFA) or the Gun Control Act (GCA).

NOTE: 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.

*As used in this worksheet, the term "accessory" is intended as a general term to describe the marketing of items commonly known as "stabilizing braces" and does not affect any ATF determinations whether such items when attached to a handgun are, in fact, "accessories" not necessary for the operation of the handgun, but which enhance its usefulness or effectiveness, or whether they are component parts necessary to properly operate a weapon, such as a rifle. Furthermore, use of that term does not affect any determinations whether such items are "defense articles" under the Arms Export Control Act. Please direct all inquiries as to possible liability for the firearms and ammunition excise tax, 26 U.S.C. sections 4181-4182 to the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB).

Weapon:			Explanation:
AR-type w/SBA3 accessory			
SECTION I - PREREQUISITES			[Suitability of "Brace" use]
1. The weapon must weigh at least 64 ounces.	**89 ounces**		* Weighed with magazine - unloaded / accessories removed
2. The weapon must have an overall length between 12 and 26 inches.	**25-1/8**		* Length measured with all non-operational accessories removed
Weapon must meet both Prerequisites in order to proceed to Section II.			
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB TOTAL	
SECTION II - Accessory Characteristics			[Determination of use as a "Brace" vs. Stock]
ACCESSORY DESIGN			
Not based on a known shoulder stock design	0		
Incorporates shoulder stock design feature(s)	1	**1**	
Based on a known shoulder stock design	2		
REAR SURFACE AREA			
Device incorporates features to prevent use as a shouldering device	0		
Minimized Rear Surface lacking features to discourage shouldering	1		
Rear Surface useful for shouldering the firearm	2		
Material added to increase Rear Surface for shouldering	3	**3**	
ADJUSTABILITY			
Non-adjustable, fixed design	0		
Adjustable or telescoping attachment designed for shouldering	2	**2**	
STABILIZING SUPPORT			
Counterbalance Design - Non-Folding	0		
Counterbalance Design that Folds creating Rear Contact Surface	1		
OR:			
"Fin- type" design **WITH** Arm Strap	0		
"Fin- type" design **WITHOUT** Arm Strap	2		
OR:			
"Cuff-type" design that **FULLY** wraps around arm	0		
"Cuff-type" design that **PARTIALLY** wraps around arm	1		
"Cuff-type" design that **FAILS** to wrap around arm	2	**2**	
"Split-stock" configuration not designed to wrap around shooter's arm	3		
SECTION II SCORE ACHIEVED:		**8**	
Section II Must Score LESS than 4 in order to proceed to Section III			***Weapon fails to proceed to Section III**

ATF WORKSHEET 4999 (5330.5) (5-21)

SECTION III - Configuration of Weapon			[Determination if weapon is shoulder fired]
LENGTH OF PULL - w/Accessory in Rear most "Locked Position"			* Measured from the center of the trigger to the center of the
Less than 10-1/2 Inches	0		shoulder device / "stabilizing brace"
10-1/2 but under 11-1/2 Inches	1		
11-1/2 but under 12-1/2 Inches	2		
12-1/2 but under 13-1/2 Inches	3	**3**	
13-1/2 Inches and Over	4		
ATTACHMENT METHOD			
Standard AR-type Pistol Buffer Tube (6-6-1/2 Inches)	0		
AR-type Pistol Buffer Tube with Adjustment Notches (KAK-type)	1		
Adjustable Rifle Buffer Tube	1	**1**	
Adjustable PDW-type guide rails	1		
Extended AR-type Pistol Buffer Tube	2		
Inclusion of Folding Adapter extending length of pull	2		
Use of "Spacers" to extend length of pull	2		
Modified shoulder stock with rear replaced by "stabilizing brace"	3		
Attachment method creates an unusable aim-point (slant)	3		
"STABILIZING BRACE" MODIFICATIONS / CONFIGURATION			
"Cuff-type" or "fin-type" design with strap too short to function	2		
"Cuff-type" or "fin-type" design with strap made out of elastic material	2		
"Fin-type" lacking an arm strap	2		
"Cuff-type" design with strap **REMOVED**	4		
"Brace" accessory modified for shouldering	4		
Modified Shoulder Stock (originally a Shoulder Stock)	4		
PERIPHERAL ACCESSORIES			
Presence of a Hand Stop	2		
Presence of a Secondary Grip (indicating two-handed fire)	4		
Presence of Rifle-type Back-up / Flip-up Sights / Or no sights	1	**1**	
Presence of Reflex Sight with FTS Magnifier w/ Limited Eye-Relief	2		
Presence of a Sight/Scope with Eye Relief Incompatible with one-handed fire	4		
Presence of a bipod / monopod	2		
Weapon as configured weighing more than 120 ounces	4		* Weighed with magazine - unloaded
SECTION III SCORE ACHIEVED:		**5**	
(A SCORE OF 4 POINTS OR MORE INDICATES A SHOULDER-FIRED DESIGN)			
CLASSIFICATION:			***Rifle / "short-barreled rifle"***
			ATF WORKSHEET 4999 (5330.5) (5-21)

SBA3 Accessory:

ATF evaluated an AR-type firearm with the SBA3 accessory, and would determine the above firearm to be designed and intended to be fired from the shoulder. Applying the criteria in Section I, the firearm was determined to weigh approximately 89 ounces and have an overall length of 25-1/8 inches, and thus would be a suitable host firearm for a "stabilizing brace" accessory. In Section II, the firearm would score a total of 8 points, precluding it from proceeding to Section III. The firearm with attached SBA3 would accrue 1 point in Accessory Design for incorporating known shoulder stock features, such as an adjustment lever, a Quick Detach (QD) sling mount, and incorporation of hardened polymer-type material. In Rear Surface Area, the firearm would accrue 3 points, as the SBA3 accessory has additional rear surface material added for use in shouldering. In Adjustability, the firearm would accrue 2 points for being an adjustable design. Finally, in Stabilizing Support the firearm would accrue 2 point, as the flaps on the "Cuff-type" design fail to wrap around a shooter's forearm.

Although an evaluation under Section III is not necessary as the firearm would have already been determined to be designed to be fired from the shoulder, the firearm was further evaluated for informational purposes. Under Section III, the firearm would

score a total of 5 points. In Length of Pull, the firearm was determined to possess a length of pull of approximately 12-1/2 inches; thereby it would accrue 3 points. In Attachment Method, the firearm would accrue 1 point as the SBA3 accessory utilizes an M4-type rifle buffer tube. Under the "Stabilizing Brace" Modification category, the firearm was determined to have no modifications, and would accrue 0 points. Finally, in Peripheral Accessories, the firearm possessed rifle-type flip-up sights, and thereby would accrue 1 point. As evaluated, no other aftermarket components or accessories were installed onto the firearm. The firearm, in this configuration, would score a total of 5 points in this section, and would be determined to be designed and intended to be fired from the shoulder. Therefore, the evaluated firearm, *as submitted*, would be classified as a "rifle." Further, having a rifled barrel less than 16 inches in length, the firearm would be properly classified as a "short-barreled rifle" and an NFA "firearm."

C. <u>AR-Type Firearm with Shockwave Blade Accessory</u>

U.S. DEPARTMENT OF JUSTICE

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

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SUMMARY: This chart lists the factors ATF considers when evaluating a firearm with an accessory (commonly referred to as a "stabilizing braces") for classification under the National Firearms Act (NFA) or the Gun Control Act (GCA).

NOTE: 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.

*As used in this worksheet, the term "accessory" is intended as a general term to describe the marketing of items commonly known as "stabilizing braces" and does not affect any ATF determinations whether such items when attached to a handgun are, in fact, "accessories" not necessary for the operation of the handgun, but which enhance its usefulness or effectiveness, or whether they are component parts necessary to properly operate a weapon, such as a rifle. Furthermore, use of that term does not affect any determinations whether such items are "defense articles" under the Arms Export Control Act. Please direct all inquiries as to possible liability for the firearms and ammunition excise tax, 26 U.S.C. sections 4181-4182 to the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB).

Weapon:			Explanation:
Manufacturer/Model			
SECTION I - PREREQUISITES			[Suitability of "Brace" use]
1. The weapon must weigh at least 64 ounces.	**93 ounces**		* Weighed with magazine - unloaded / accessories removed
2. The weapon must have an overall length between 12 and 26 inches.	**23**		* Length measured with all non-operational accessories removed
Weapon must meet both Prerequisites in order to proceed to Section II.			
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB TOTAL	
SECTION II - Accessory Characteristics			[Determination of use as a "Brace" vs. Stock]
ACCESSORY DESIGN			
Not based on a known shoulder stock design	0	**0**	
Incorporates shoulder stock design feature(s)	1		
Based on a known shoulder stock design	2		
REAR SURFACE AREA			
Device incorporates features to prevent use as a shouldering device	0		
Minimized Rear Surface lacking features to discourage shouldering	1	**1**	
Rear Surface useful for shouldering the firearm	2		
Material added to increase Rear Surface for shouldering	3		
ADJUSTABILITY			
Non-adjustable, fixed design	0		
Adjustable or telescoping attachment designed for shouldering	2	**2**	
STABILIZING SUPPORT			
Counterbalance Design - Non-Folding	0		
Counterbalance Design that Folds creating Rear Contact Surface	1		
OR:			
"Fin- type" design **WITH** Arm Strap	0		
"Fin- type" design **WITHOUT** Arm Strap	2	**2**	
OR:			
"Cuff-type" design that **FULLY** wraps around arm	0		
"Cuff-type" design that **PARTIALLY** wraps around arm	1		
"Cuff-type" design that **FAILS** to wrap around arm	2		
"Split-stock" configuration not designed to wrap around shooter's arm	3		
SECTION II SCORE ACHIEVED:		**5**	
Section II Must Score LESS than 4 in order to proceed to Section III			***Weapon fails to proceed to Section III**

ATF WORKSHEET 4999 (5330.5) (5-21)

SECTION III - Configuration of Weapon			[Determination if weapon is shoulder fired]
LENGTH OF PULL - w/Accessory in Rear most "Locked Position"			* Measured from the center of the trigger to the center of the
Less than 10-1/2 Inches	0		shoulder device / "stabilizing brace"
10-1/2 but under 11-1/2 Inches	1		
11-1/2 but under 12-1/2 Inches	2		
12-1/2 but under 13-1/2 Inches	3	**3**	
13-1/2 Inches and Over	4		
ATTACHMENT METHOD			
Standard AR-type Pistol Buffer Tube (6-6-1/2 Inches)	0		
AR-type Pistol Buffer Tube with Adjustment Notches (KAK-type)	1	**1**	
Adjustable Rifle Buffer Tube	1		
Adjustable PDW-type guide rails	1		
Extended AR-type Pistol Buffer Tube	2		
Inclusion of Folding Adapter extending length of pull	2		
Use of "Spacers" to extend length of pull	2		
Modified shoulder stock with rear replaced by "stabilizing brace"	3		
Attachment method creates an unusable aim-point (slant)	3		
"STABILIZING BRACE" MODIFICATIONS / CONFIGURATION			
"Cuff-type" or "fin-type" design with strap too short to function	2		
"Cuff-type" or "fin-type" design with strap made out of elastic material	2		
"Fin-type" lacking an arm strap	2	**2**	
"Cuff-type" design with strap **REMOVED**	4		
"Brace" accessory modified for shouldering	4		
Modified Shoulder Stock (originally a Shoulder Stock)	4		
PERIPHERAL ACCESSORIES			
Presence of a Hand Stop	2		
Presence of a Secondary Grip (indicating two-handed fire)	4	**4**	
Presence of Rifle-type Back-up / Flip-up Sights / Or no sights	1		
Presence of Reflex Sight with FTS Magnifier w/ Limited Eye-Relief	2		
Presence of a Sight/Scope with Eye Relief Incompatible with one-handed fire	4	**4**	
Presence of a bipod / monopod	2		
Weapon as configured weighing more than 120 ounces	4		* Weighed with magazine - unloaded
SECTION III SCORE ACHIEVED:		**14**	
(A SCORE OF 4 POINTS OR MORE INDICATES A SHOULDER-FIRED DESIGN)			
CLASSIFICATION:			**Rifle / "short-barreled rifle"**
			ATF WORKSHEET 4999 (5330.5) (5-21)

Shockwave Blade Accessory on KAK Tube without Strap:

ATF evaluated an AR-type firearm with the Shockwave Blade accessory, and would determine that the firearm, as configured, would be designed and intended to be fired from the shoulder. Applying the criteria in Section I, the firearm was determined to weigh approximately 93 ounces and have an overall length of 23 inches, and thus would be a suitable host firearm for a "stabilizing brace" accessory. In Section II, the submitted firearm would score a total of 5 points, precluding it from proceeding to Section III. The submitted firearm with attached Shockwave Blade accessory would accrue 0 points in Accessory Design for not incorporating known shoulder stock features, such as an adjustment lever. In Rear Surface Area, the firearm would accrue 1 point, as the Shockwave Blade accessory has minimized rear surface area discouraging shouldering. In Adjustability, the firearm would accrue 2 points because it is installed onto a KAK-type tube that incorporates adjustment notches for adjustability. Finally, in Stabilizing Support, the firearm would accrue 2 points for being submitted <u>without</u> an arm strap—greatly reducing any stabilizing support.

Although an evaluation under Section III would not be necessary as the firearm would already have been determined to be designed to be fired from the shoulder, the firearm was further evaluated for informational purposes. Under Section III, the firearm would score a total of 14 points. In Length of Pull, the firearm was determined to possess

a length of pull of approximately 13-1/4 inches, and thereby would accrue 3 points. In Attachment Method, the firearm would accrue 1 point as the Shockwave Blade accessory utilizes a KAK tube with adjustment notches. Under the "Stabilizing Brace" Modification category, the firearm would accrue 2 points for lack of an arm strap. Finally, in Peripheral Accessories, the firearm would accrue an additional 8 points. The firearm was submitted with a secondary forward grip, a determinative indicator that the weapon is not designed to be held and fired with one hand; thereby it would accrue 4 points. Further, the firearm would accrue an additional 4 points due to it being submitted with a scope that has incompatible eye relief for one-handed firing (where the weapon must be fired from the shoulder in order to use the sight). The submitted firearm, as configured, would score a total of 14 points in this section, and would be determined to be designed and intended to be fired from the shoulder. Therefore, the firearm would be classified as a "rifle." Further, having a rifled barrel less than 16 inches in length, the firearm would be properly classified as a "short-barreled rifle" and an NFA "firearm."

V. Options for Affected Persons

As mentioned, ATF wants to assist affected persons or companies and is providing additional information to aid them in complying with Federal laws and regulations. Below are options for those persons that may be affected upon publication of a final rule.

A. Current Unlicensed Possessors

In order to comply with the provisions of the NFA, current unlicensed possessors of a firearm equipped with a "stabilizing brace" and a barrel length of less than 16 inches that would qualify as a "short-barreled rifle" as indicated on the ATF Worksheet 4999 contained in this proposed rule would need to take one of the following actions before the effective date of a final rule.

1) Permanently remove or alter the "stabilizing brace" such that it cannot be reattached, thus converting the firearm back to its original pistol configuration (as long as it was originally configured without a stock and as a pistol) and thereby removing it from regulation as a "firearm" under the NFA. Exercising this option would mean the pistol would no longer be "equipped with" the stabilizing brace within the meaning of the proposed rule.
2) Remove the short barrel and attach a 16-inch or longer barrel to the firearm thus removing it from the provisions of the NFA.
3) Destroy the firearm. ATF will publish information regarding proper destruction on its website, www.atf.gov.
4) Turn the firearm into your local ATF office.
5) Complete and submit an Application to Make and Register a Firearm, ATF Form 1 ("Form 1"). As part of the submission, the $200 tax payment is required with the application. Pursuant to 27 CFR 479.102, the name, city, and state of the maker of the firearm must be properly marked on the firearm. All other markings, placed by the original manufacturer, should be adopted. Proof of submission of the Form 1 should be maintained by all possessors. Documentation establishing submission of Form 1 includes, but is not limited to, eForm submission acknowledgement, proof of payment, or copy of Form 1 submission with postmark documentation.

B. Federal firearms licensees not having paid special (occupational) tax ("SOT") as a Class 2 manufacturer under the NFA

In order to comply with the provisions of the NFA, Federal firearm licensees not having paid SOT as a Class 2 manufacturer under the NFA currently in possession of a firearm equipped with a "stabilizing brace" and a barrel length of less than 16 inches that would qualify as a "short-barreled rifle" under the ATF Worksheet 4999 contained in this

proposed rule would be required to take one of the following actions before the effective date of a final rule.

1) Options 1–4 listed above.
2) Complete and submit an ATF Form 1. As part of the submission, the $200 tax payment is required with the application. Pursuant to 27 CFR 479.102, the name, city, and state of the maker of the firearm must be properly marked on the firearm. All other markings, placed by the original manufacturer, should be adopted. Proof of submission of the Form 1 should be maintained by all possessors. Documentation establishing submission of Form 1 includes, but is not limited to, eForm submission acknowledgement, proof of payment, or copy of Form 1 submission with postmark documentation. An importer, manufacturer, or dealer licensed under the GCA, but not the NFA, may not engage in the business of dealing in NFA firearms prior to compliance with the payment of the SOT.

C. Manufacturers licensed under GCA and qualified under NFA

In order to comply with the provisions of the NFA, manufacturers licensed under the GCA and having paid SOT as a Class 2 manufacturer under the NFA currently in possession of a firearm equipped with a "stabilizing brace" and a barrel length of less than 16 inches that would qualify as a "short-barreled rifle" as indicated on the ATF Worksheet 4999 contained in this proposed rule would be required to take one of the following actions before the effective date of a final rule.

1) Options 1–4 listed above.

2) Complete and submit an ATF Form 2, Notice of Firearms Manufactured or Imported.

VI. Statutory and Executive Order Review

A. Executive Orders 12866 and 13563

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic benefits, environmental benefits, public health and safety effects, distributive impacts, and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget ("OMB") has determined that this proposed rule is a "significant regulatory action" that is economically significant under section 3(f) of Executive Order 12866, because the rule will have an annual effect on the economy of $100 million or more. Accordingly, the rule has been reviewed by OMB. As required by OMB Circular A-4 (available at http://www.whitehouse.gov), ATF has prepared an accounting statement showing the classification of expenditures associated with the NPRM.

Table 1. OMB Accounting Statement

Category	Primary Estimate	Minimum Estimate	Maximum Estimate	Units			Notes
				Dollar Year	Disc	Period Covered	
Benefits							
Annualized monetized benefits ($ Millions/year)	N/A	N/A	N/A	2020	7%	10 years	
	N/A	N/A	N/A	2020	3%	10 years	
Annualized quantified	N/A	N/A	N/A	2020	7%	10 years	
	N/A	N/A	N/A	2020	3%	10 years	
Qualitative	- Prevents manufacturers and individuals from circumventing the requirements of the NFA. - Enhances public safety by reducing the criminal use of such firearms, which are easily concealable from the public and first responders.						
Costs							
Annualized monetized costs ($ Millions/year)	$125.7	$125.7	$303.5	2020	7%	10 years	
	$114.7	$114.7	$278.2	2020	3%	10 years	
Annualized	N/A	N/A	N/A	2020	7%	10 years	

quantified	N/A	N/A	N/A	2020	3%	10 years	
Qualitative (unquantified)	N/A						
Transfers							
Federal Annualized Monetized ($ Millions/year)	$20.1	$20.1	$46.7	2020	7%	10 years	
	$17.2	$17.2	$40.0	2020	3%	10 years	
From/To	From: Individuals and FFLs			To: Federal Government			
Other Annualized monetized transfers ($ Million/year)	N/A	N/A	N/A	2020	7%	10 years	
	N/A	N/A	N/A	2020	3%	10 years	
From/To	From: N/A			To: N/A			
Effects							
State, local, and/or tribal governments	The rule would not have a significant intergovernmental mandate, significant or unique effect on small governments, or have Federalism or Tribal implications.						
Small businesses	Approximately 3 manufactures of "stabilizing braces" would be significantly affected by more than 10% of their revenue. May affect 13,210 Type 1 FFLs and 3,881 Type 7 FFLs. Most Type 1 FFLs are small businesses, but likely would need to make less than $2,357 in revenue to have an impact of 10 percent or more.						
Wages	N/A						
Growth	N/A						

Table 2 summarizes the affects that this proposed rule would have on the industry and public.

Table 2 Summary of Affected Population, Costs, and Benefits

Category	Affected Populations, Costs, and Benefits
Affected Population	• 8 Manufacturers of affected "stabilizing braces" • 3,881 Manufacturers of "short-barreled rifles" that have a "stabilizing brace" attachment • 13,210 Dealers of "short-barreled rifles" that have a "stabilizing brace" attachment

	• 1.4 million firearm owners who have purchased pistols with "stabilizing braces" attached and those who intend to purchase them in the future
Costs (annualized)	• $125.7 million at 7% • $114.7 million at 3%
Total Quantified from Industry, to the Government (annualized)	• $20.1 million at 7% • $17.2 million at 3%
Unquantified Benefits	• Prevents manufacturers and individuals from circumventing the requirements of the NFA. • Enhances public safety by reducing the criminal use of such firearms, which are easily concealable from the public and first responders.

Need for Federal Regulatory Action

One of the reasons ATF is considering this proposed regulation is the failure of the market to compensate for negative externalities caused by commercial activity. A negative externality can be the by-product of a transaction between two parties that is not accounted for in the transaction. A negative externality addressed by this proposed rule is that individuals and manufacturers may try to use purported "stabilizing braces" and affix them to firearms to circumvent the requirements of the NFA, which requires registration and taxes to be paid on the making and transfer of NFA weapons. Further, Congress chose to regulate these items more stringently, finding them to be especially dangerous to the community if not regulated since they are used for violence and criminal activity. *See United States v. Gonzalez*, No. 2:10-cr-00967 CW, 2011 WL 5288727, at *5 (D. Utah Nov. 2, 2011) ("Congress specifically found that 'short-barreled rifles are primarily weapons of war and have no appropriate sporting use or use for personal protection." (quoting S. Rep. No. 90-1501, at 28 (1968))). Therefore, if persons can circumvent the NFA by effectively making unregistered "short-barreled rifles" by using an accessory such as a "stabilizing brace," these weapons can continue to proliferate and could pose an increased public safety problem given that they are easily concealable.

Population

Based on subject matter experts ("SMEs"), ATF estimates that there are at least eight manufacturers of "stabilizing braces." Anecdotal evidence from the manufacturers of the affected "stabilizing braces" indicates that the manufacturers have sold between 3 million and 7 million "stabilizing braces" between the years 2013 to 2020 or over the course of eight years. For the purposes of this analysis, ATF uses 3 million as the low estimate and primary estimate of affected "stabilizing braces." This proposed rule may affect upwards of 1.4 million individuals, 13,210 Type 1 Federal Firearms Licensees ("FFLs"), and 3,881 Type 7 FFLs. For more details, please refer to Chapter 2 and each of the specific cost chapters of the standalone Regulatory Impact Analysis ("RIA") for this proposed rule.

Scenario 1: Turn in Firearm to ATF

One option for current owners of firearms with "stabilizing braces" to comply with the proposed rule would be to turn in the firearm with the attached stabilizing brace to ATF for disposal. As the individual possessing the firearm would be permitted to simply remove the "stabilizing brace" and dispose of it, while retaining the firearm, ATF believes it would be unlikely that individuals would turn in their entire firearm into ATF to be destroyed. As ATF does not anticipate anyone choosing to turn in a firearm with an attached stabilizing brace into ATF for disposal, so no cost was attributed to this scenario. Because braces themselves, as firearm accessories or components, are generally not regulated items, ATF requests comments regarding the population, methodology, and scope of this scenario.

Scenario 2: Convert Firearm into a Long-Barreled Rifle

Another scenario is for individuals and FFLs to retain the "stabilizing brace" but convert the firearm into a firearm under the GCA rather than under the NFA. More specifically, they may convert the firearm into a long-barreled rife. ATF anticipates the

minimum need is to purchase a long barrel and handrails. The average cost of a long barrel is $198.[21] The average cost for handrails is $212,[22] making the cost per firearm $410.[23] ATF estimates that the average affected individual may own approximately two firearms with an attached "stabilizing brace" while affected FFLs own an average of 3 firearms with an attached "stabilizing brace." The total cost for this scenario is $125.1 million. For more details, please refer to Chapter 4 of the standalone RIA. Because braces themselves are generally not regulated items, ATF requests comments regarding the population, methodology, and scope of this scenario.

Scenario 3: Apply to Register Under the NFA

Individuals and FFLs could keep their firearms with attached "stabilizing brace" and apply to register under the NFA. Under this scenario, individuals and Type 1 FFL dealers would need to complete a Form 1 for each and every firearm affected by this proposed rule. Type 7 FFL manufacturers would complete a Form 2 for all their affected firearms in inventory. FFLs would then be able to sell these firearms with attached "stabilizing braces" as NFA weapons to individuals who wish to purchase them. The estimated cost for an individual to apply for two firearms with attached "stabilizing braces" would be $132.[24] The cost per Type 1 FFL to fill out 3 Form 1s is $985.[25] The

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[21] https://www.brownells.com/rifle-parts/barrel-parts/rifle-barrels/ar-15-6mm-arc-barrels-heavy-profile-prod135844.aspx (accessed May 10, 2021); https://www.hinterlandoutfitters.com/mossberg-92062-rifled-barrel-wsights-gauge-slug-p-13798.html (accessed May 10, 2021); https://www.hinterlandoutfitters.com/mossberg-90831-ulti-barrel-wparkerized-finish-accu-chokes-gauge-ulti-slug-p-13809.html (accessed May 10, 2021); https://www.gunpartscorp.com/category/barrels/rifle-barrels/sig-sauer/516-sig (accessed May 10, 2021); https://www.gunpartscorp.com/category/barrels/rifle-barrels/sig-sauer/516-sig (accessed May 10, 2021); https://www.gunpartscorp.com/category/barrels/rifle-barrels/colt/lightning-cf-rifle (accessed May 10, 2021); https://www.midwayusa.com/product/1017600744 (accessed May 10, 2021); https://www.midwayusa.com/product/1017600744 (accessed May 10, 2021); https://www.midwayusa.com/product/1017600744 (accessed May 10, 2021); https://www.midwayusa.com/product/1023207522 (accessed May 10, 2021).

[22] https://www.aeroprecisionusa.com/ar15-atlas-r-one-m-lok-handguard (accessed Apr. 14, 2021); https://slrrifleworks.com/hand-guards/5-56-handguards/ion-series/ion-ultra-lite/ (accessed Apr. 14, 2021); https://www.odinworks.com/O2_Lite_M_LOK_Forend_p/f-12-ml-o2.htm (accessed Apr. 14, 2021);. https://seekinsprecision.com/noxs-mlok-rail-1-1.html (accessed Apr. 14, 2021).

[23] $410 = $198 + $212.

[24] $132 = (($16.52 leisure hourly wage * 4 hours)) * 2 applications.

[25] $985 = (($82.08 average loaded hourly wage * 4 hours)) * 3 applications.

cost per Type 7 FFL to fill out one Form 2 is $47.[26] The total industry cost to this scenario is a one-time cost of $51.3 million. While individuals and Type 1 FFLs would need to pay a $200 makings tax per firearm under the NFA, because this cost is a transfer payment from industry to the Federal Government, the transfer payment of these taxes is described under section 7.2 of the standalone RIA. For more details, please refer to Chapter 5 of the standalone RIA. Because braces themselves are generally not regulated items, ATF requests comments regarding the population, methodology, and scope of this scenario.

Scenario 4: Permanently Remove or Alter Affected "Stabilizing Braces" Currently in Circulation and Foregone Future Sales

Under this scenario, all parties affected could simply permanently remove or alter their "stabilizing braces" as they see fit. However, ATF has determined this would be a loss of property. There are various types of "stabilizing braces" that would be affected by this proposed rule. We assume that the lost value to owners of a "stabilizing brace" would be at least as much as the cost of a new "stabilizing brace." The average cost for a "stabilizing brace" is $236.[27] At 1.9 million "stabilizing braces" affected under this scenario, ATF estimates that the cost for disposing of currently existing "stabilizing braces" would be $443.9 million.[28]

While these "stabilizing braces" have been purchased over the course of eight years, ATF uses that information to estimate the future sales of these affected "stabilizing braces" forgone. However, in lieu of promulgating a proposed regulation, ATF has been

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[26] $47 = $62.93 average loaded hourly wage * 0.75 hours.

[27] https://www.sb-tactical.com/product/sba3/ (accessed Apr. 22, 2021); https://www.sb-tactical.com/product/sbm47/ (accessed Apr. 22, 2021); https://www.sb-tactical.com/product/hkpdw/ (accessed Apr. 22, 2021); https://www.sb-tactical.com/product/tac13-sba3/ (accessed Apr. 22, 2021); https://www.sb-tactical.com/product/czpdw/ (accessed Apr. 22, 2021); https://www.sb-tactical.com/product/fs1913/ (accessed Apr. 22, 2021); https://www.pewpewtactical.com/best-ar-15-pistols/ (accessed Apr. 22, 2021).

[28] $443.9 million = ((905,523 individuals * 2 "stabilizing braces") + (10,642 Type 1 FFLs * 3 "stabilizing braces") + (1,263 Type 7 FFLs * 32 "stabilizing braces")) * $236 cost of brace.

and will continue to use enforcement actions, to include criminal actions, against existing FFLs that manufacture firearms that do not comply with the intent of the law. ATF estimates that in the absence of this proposed rule, these individual enforcement actions against existing FFLs would change the market perception of these "stabilizing braces" and may affect the overall demand for these items regardless of the implementation of the proposed rule. Therefore, ATF estimates that the overall future demand for "stabilizing braces" would decrease by the estimated amount attributed to Type 1 and Type 7 FFLs, making the primary estimate of future "stabilizing braces" 211,178 per year.[29] Thus, ATF estimates that this scenario would mean a loss of $49.7 million in sales per year.

For more details, please refer to Chapter 6 of the standalone RIA. Because braces themselves are not regulated items, ATF requests comments regarding the population, methodology, and scope of this scenario.

Total cost of the proposed rule

This section summarizes the total costs of this proposed rule as described throughout this RIA. As noted in Chapter 5 of the standalone RIA, $151.0 million was not accounted for in Chapter 5 due to the NFA tax. Because it would be considered a transfer payment from the public to the Federal Government, it was not included in the societal cost of the rule. The annualized cost of this proposed rule would be $114.7 million and $125.7 million, at 3 percent and 7 percent, respectively. At this time, the government cost of this proposed rule was not included in this cost assessment.

Benefits

This proposed rule would affect attempts by manufacturers and individuals to circumvent the requirements of the NFA and would affect the criminal use of weapons with a purported "stabilizing brace," such as the shooting incident at the King Soopers in

[29] 211,178 future "stabilizing braces" = 375,000 annual "stabilizing braces" – (13,210 Type 1 FFL * 3 stabilizing braces) – (3,881 Type 7 FFL * 32 stabilizing braces).

Boulder, Colorado. The purpose of this proposed rule is to amend ATF regulations to clarify when a rifle is "intended to be fired from the shoulder" and to set forth factors that ATF considers when evaluating firearms with an attached purported "stabilizing brace" to determine whether these are "rifles" under the GCA or NFA, and therefore whether they are "firearms" subject to the NFA. Congress placed stricter requirements on the making and possession of "short-barreled rifles" because it found them to pose a significant crime problem. Providing clarity to the public and industry on how ATF enforces the provisions of the NFA through this proposed rule significantly enhances public safety and could reduce the criminal use of such firearms, which are easily concealable from the public and first responders.

Alternatives

This section outlines the various alternatives considered when creating this proposed rule. For a more detailed analysis, please refer to Chapters 1 and 10 of the RIA.

Proposed Alternative—Factoring Criteria for Firearms with Attached Stabilizing Braces. This proposed alternative would amend the definitions of rifle in 27 CFR 478.11 and 27 CFR 479.11 to indicate that a rifle includes any weapon with a rifled barrel equipped with an accessory or component purported to assist the shooter to 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 described in ATF Worksheet 4999.

Alternative 1—No change alternative. This alternative has no costs or benefits because it is maintaining the existing status quo. This alternative was considered and not implemented because the NFA requires regulation of certain types of firearms above what is required under the GCA.

Alternative 2—Simple Criteria. This alternative would provide very short and simple parameters in terms of how a "stabilizing brace" or stock would be defined, such

as length only. This alternative would be easy for the public to read and understand. Where this was feasible, ATF has incorporated these simple and easy to follow parameters.

Alternative 3—Grandfather all existing firearms with an attached "stabilizing brace." In order to enforce the regulation, a complete grandfathering of existing firearms with an attached "stabilizing brace" is problematic in that manufacturers could continue to produce these items that are actually "rifles" under the statutory definition and subject to the NFA and market them as grandfathered firearms with an attached "stabilizing brace" not subject to the same regulation. This could potentially pose an enforcement issue that may not be resolved for years if not decades.

Alternative 4—Guidance documents. This alternative would publish a guidance document instead of a rulemaking. While this alternative minimizes cost because compliance in this scenario would be voluntary, it does not meet the objectives outlined in this proposed rule as guidance documents do not have the same force and effect as a regulation. Guidance documents do not in and of themselves impose binding legal obligations. This would pose an enforcement issue. Moreover, issuing a proposed rule invites comments from the public, creating greater transparency and notice.

Alternative 5—Forgiveness of the NFA Tax. This alternative would allow individuals and entities that currently have firearms with attached "stabilizing braces" to apply and register firearms under the NFA without paying the $200 making tax. In this scenario, the societal costs would be the same except there would be no transfer payment. Similar to the proposed rule, the bulk of this cost would be the foregone future revenue and the loss in property for individuals not applying under the NFA.[30] This scenario was rejected because "stabilizing braces" are not serialized and an individual or entity could

[30] However, the real cost to the individual or FFL would be minimal since filling out the form would not necessarily incur an out-of-pocket cost and the tax would not be incurred either.

merely register all firearms possessed with the intent of later obtaining a "stabilizing brace." Further, although the "brace" is used on a particular weapon, an individual might register all pistols as SBRs and then attempt to utilize other stocks on these firearms.

B. Executive Order 13132

This proposed rule will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (Federalism), the Attorney General has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform).

D. Regulatory Flexibility Act (RFA)

In accordance with the Regulatory Flexibility Act ("RFA"), ATF prepared an Initial Regulatory Flexibility Analysis ("IRFA") that examines the impacts of the proposed rule on small entities (5 U.S.C. 601 *et seq*.). The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 people.

<u>Summary of Findings</u>

ATF performed an IRFA of the impacts on small businesses and other entities from the Factoring Criteria for Firearms with Attached "Stabilizing Braces" proposed rule [2021R-08] . We performed this assessment using the cost information discussed in chapters 2 through 7 of the RIA.

Based on the information from this analysis, we found:

- ATF estimates that this proposed rule would potentially affect at least 8 manufactures of "stabilizing braces." Based on SME commentary, it is anticipated 3 of them would go out of business;
- ATF also anticipates that this proposed rule would affect 17,091 FFLs, many of whom would be considered small businesses;
- However, the highest anticipated cost to would be if a Type 1 FFL had 24 "stabilizing braces" (the high estimate that a Type 1 FFL may have) and opted to file under the NFA. Should they own 24 arm braces and opt to apply under the NFA, ATF anticipates these FFLs would need to make $111,855 in revenue or less in order to incur an impact of 10 percent or more.
- There are no relevant government entities.

Preliminary Initial Regulatory Flexibility Analysis

The RFA establishes that agencies must try to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this goal, agencies must solicit and consider flexible regulatory proposals and explain the rationale for their actions to assure that such proposals are given serious consideration.[31]

Under the RFA, we are required to consider what, if any, impact this rule would have on small entities. Agencies must perform a review to determine whether a rule will have such an impact. Because the agency has determined that it will have a significant impact on a substantial number of small entities, the agency has prepared an initial regulatory flexibility analysis as described in the RFA.

Under section 603(b) of the RFA, the regulatory flexibility analysis must provide or address:

- A description of the reasons why action by the agency is being considered;

[31] Regulatory Flexibility Act, Pub. L. 96-354, sec. 2(b), 94 Stat. 1164 (1980).

- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and
- Descriptions of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

A description of the reasons why action by the agency is being considered

One of the reasons ATF is considering this proposed rule is the failure of the market to compensate for negative externalities caused by commercial activity. A negative externality can be the by-product of a transaction between two parties that is not accounted for in the transaction. A negative externality addressed by this proposed rule is that individuals and manufacturers may try to use purported "stabilizing braces" and affix them to firearms to circumvent the requirements of the NFA, which requires registration and taxes to be paid on the making and transfer of NFA weapons. If persons can circumvent the NFA by effectively making unregistered "short-barreled rifles" by using an accessory such as a "stabilizing brace," these weapons can continue to proliferate and could pose an increased public safety problem given that they are easily concealable.

A succinct statement of the objectives of, and legal basis for, the proposed rule

The Attorney General is responsible for enforcing the GCA, as amended, and the NFA, as amended. This responsibility includes the authority to promulgate regulations necessary to enforce the provisions of the GCA and NFA. *See* 18 U.S.C. 926(a); 26 U.S.C. 7801(a)(2)(A), 7805(a). The Attorney General has delegated the responsibility for administering and enforcing the GCA and NFA to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. *See* 28 U.S.C. 599A(b)(1); 28 CFR 0.130(a)(1)–(2). Accordingly, the Department and ATF have promulgated regulations implementing both the GCA and the NFA. *See* 27 CFR parts 478, 479.

This proposed rule would prevent persons from circumventing the NFA by using arm braces as stocks on "short-barreled rifles". If persons can circumvent the NFA by effectively making unregistered "short-barreled rifles" by using an accessory such as a "stabilizing brace," these weapons can continue to proliferate and could pose an increased public safety problem given that they are easily concealable.

<u>A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply</u>

This rule would affect primarily three manufacturers of certain "stabilizing braces" that have been primarily used as an alternative to a stock on a firearm. It is anticipated they would lose their business of manufacturing "stabilizing braces."

This proposed rule would also affect FFLs that sell these affected arm braces, and other small retailers of firearm accessories that have invested in the arm brace industry. ATF anticipates that this proposed rule would affect 17,091 FFLs, many of whom would be considered small businesses.

Based on data gleaned from persons who turned in bump stocks, an FFL could have as many as 24 "stabilizing braces" affected by this proposed rule. The majority are likely to own only one. The cost for an FFL could range from $236 to dispose of one

"stabilizing brace" to $11,185 to submit 24 applications under the NFA. ATF anticipates the majority of FFLs to experience a one-time cost of $236 for the disposal of one "stabilizing brace." However, the highest anticipated cost would occur if an FFL had 24 "stabilizing braces" and opted to file under the NFA. Should they own 24 arm braces and opt to apply under the NFA, ATF anticipates that these FFLs would need to make $111,855 in revenue or less in order to incur an impact of 10 percent or more.

Assuming that the average Type 1 FFL has an average of 3 "stabilizing braces" in inventory and opts to dispose of them, the FFL would lose $707 per entity. This would mean that the FFL would need to make $7,071 or less to incur a significant impact.

<u>An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule</u>

This proposed rule does not duplicate or conflict with other Federal rules.

<u>Descriptions of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities</u>

Please see Chapter 9 of the RIA on the discussion of alternatives. ATF did not create any alternatives specific to small businesses but notes that the majority of the affected businesses would be considered small.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is likely to be considered major as it is economically significant and is projected to have an effect of over $100 million on the economy in at least the first year of the rule. *See* 5 U.S.C. 804.

F. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed

necessary under the provisions of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Pub. L. 104-4, 109 Stat. 48, based on the proposed rule's impact on State, local, or Tribal governments. However, based on the analysis presented in the RIA, the Department concludes that the proposed rule would impose a Federal mandate on the private sector in excess of $100 million in expenditures in any one year. The RIA constitutes the written statement containing a qualitative and quantitative assessment of the anticipated costs, benefits, and alternatives required under section 202(a) of the UMRA (2 U.S.C. 1532).

G. Paperwork Reduction Act of 1995

This proposed rule would call for collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Under the provisions of this proposed rule, there would be a one-time increase in paperwork burdens of NFA applications. This requirement would be added to an existing approved collection covered by OMB control number 1140-0011 and 1140-0012.

TITLE: Application to Make and Register a Firearm

OMB Control Number: OMB 1140-0011

PROPOSED USE OF INFORMATION: The ATF Form 1 (5320.1) is required to register an NFA firearm by any person, other than a qualified manufacturer, who wishes to make and register an NFA firearm. The implementing regulations are in 27 CFR 479.61–479.71. Under the provisions of 26 U.S.C. 5822, no person can make an NFA firearm

until he or she has applied for and received approval from the Attorney General (delegated to ATF). Subject to certain exceptions, the making of an NFA firearm is subject to a tax of $200 (26 U.S.C. 5821). The proposed use of this information is to ensure that applicants are in compliance with relevant laws.

DESCRIPTION AND NUMBER OF RESPONDENTS: Currently, there is a total of 25,716 respondents to this information collection. Of these 25,716 respondents, 477 of them are FFLs, 21,879 of them are trusts and legal entities, and 3,360 of them are individuals. For the purposes of this proposed rule, ATF estimates 1,679 FFLs and 375,000 individuals would submit a response due to this proposed rule. For the purposes of this proposed rule, the number of trusts and legal entities were not calculated.

FREQUENCY OF RESPONSE: One time.

BURDEN OF RESPONSE: Currently, one time. For this proposed rule, 2 to 3 times, depending on the number of firearms.

ESTIMATE OF TOTAL ANNUAL BURDEN: The existing hourly burden is 102,808 hours, with an additional 3,020,148 hours due to this proposed rule.

TITLE: Notice of Firearms Manufactured or Imported

OMB Control Number: OMB 1140-0012

PROPOSED USE OF INFORMATION: The Notice of Firearms Manufactured or Imported, ATF Form 2 (5320.2), is required of (1) a person who is qualified to manufacture NFA firearms, or (2) a person who is qualified to import NFA firearms to register manufactured or imported NFA firearm(s). In general, under the provisions of 26 U.S.C. 5822, no person can make an NFA firearm until he or she has applied for and received approval from the Attorney General of the United States (delegated to ATF). Subject to certain exceptions, the making of an NFA firearm is subject to a tax of $200. Section 5841(b) provides that each manufacturer and importer shall register each firearm manufactured or imported. Section 5841(c) provides that each manufacturer shall notify

the Attorney General about the manufacture of a firearm, as provided by the regulations. These regulations further stipulate that each importer must obtain authorization as required by regulations, prior to importing a firearm. Section 5852(c) exempts a qualified manufacturer from payment of the making tax for manufactured firearms. The proposed use of this information is to ensure that applicants are in compliance with relevant laws.

DESCRIPTION AND NUMBER OF RESPONDENTS: Currently, there are 14,384 FFLs with SOT.

FREQUENCY OF RESPONSE: One time.

BURDEN OF RESPONSE: Currently, respondents will respond one time. This proposed rule may require a second response to incorporate a change in inventory.

ESTIMATE OF TOTAL ANNUAL BURDEN: Currently, the burden hours is 7,192. This rule would add an additional burden of 1,323 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the OMB for its review of the collections of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the proposed collection.

VII. Public Participation

A. Comments Sought

ATF requests comments on the proposed rule from all interested persons. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. ATF also requests comments on the costs or benefits of the proposed rule and on the appropriate methodology and data for calculating those costs and benefits. Additionally, ATF requests comments on providing a tax forgiveness for the registration of "short-barreled rifles" pursuant to this proposed rule.

ATF recognizes that individuals may have submitted comments previously in response to a notice ATF published on December 18, 2020, titled "Objective Factors for Classifying Weapons with 'Stabilizing Braces.'" 85 FR 82516. However, the notice was withdrawn on December 31, 2020, prior to the comment period ending. 85 FR 86948. Moreover, this proposed rule incorporates different provisions than the December 2020 notice did, including a series of objective factors that are weighted in order to reflect objective decisions based on the design elements of each "stabilizing brace." Comments received pursuant to that notice have not been, and will not be, considered as part of this proposed rule. Commenters will need to submit new comments in connection with this proposed rule.

All comments should reference this document's docket number ATF 2021R-08, be legible, and include the commenter's complete first and last name and full mailing address. ATF may not consider, or respond to, comments that do not meet these requirements or comments containing excessive profanity. ATF will retain all comments as part of this rulemaking's administrative record. ATF will treat all comments as originals and will not acknowledge receipt of comments. In addition, if ATF cannot read your comment due to technical difficulties and cannot contact you for clarification, ATF may not be able to consider your comment.

ATF will carefully consider all comments, as appropriate, received on or before the closing date, and will give comments after that date the same consideration if practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

In addition to the broader requests for comment outlined above, ATF is interested in specific comments from the public that may help address the following questions:

1. How do current owners of stabilizing braces anticipate that they will choose to comply with this rulemaking if it is finalized? Are owners more likely to permanently remove or alter their braces, turn in their firearms with a brace to ATF, or register them with ATF as NFA firearms and pay the associated tax? Would owners be more likely to register their firearms instead of choosing one of the other options if the tax on the registration is forgiven?
2. How do manufacturers anticipate they will comply with this rulemaking, if finalized? Will manufacturers stop making stabilizing braces, alter their stabilizing braces in some manner so they don't meet the criteria in this rulemaking, or market their braces differently?
3. Has ATF selected the most appropriate criteria for determining whether a stabilizing brace has made a firearm subject to the NFA? Do commenters have additional criteria that should be considered?

B. Confidentiality

ATF will make all comments meeting the requirements of this section, whether submitted electronically or on paper, available for public viewing at ATF and on the Internet through the Federal eRulemaking Portal, and subject to the Freedom of Information Act (5 U.S.C. 552). Commenters who do not want their name or other personal identifying information posted on the Internet should submit comments by mail or facsimile, along with a separate cover sheet containing their personal identifying

information. Both the cover sheet and comment should reference this docket number (2021R-08). For comments submitted by mail or facsimile, information contained on the cover sheet will not appear when posted on the Internet but any personal identifying information that appears within a comment will not be redacted by ATF and will appear on the Internet.

A commenter may submit to ATF information identified as proprietary or confidential business information. The commenter shall place any portion of a comment that is proprietary or confidential business information under law on pages separate from the balance of the comment with each page prominently marked "PROPRIETARY OR CONFIDENTIAL BUSINESS INFORMATION" at the top of the page.

ATF will not make proprietary or confidential business information submitted in compliance with these instructions available when disclosing the comments that it received but will disclose that the commenter provided proprietary or confidential business information that ATF is holding in a separate file to which the public does not have access. If ATF receives a request to examine or copy this information, it will treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). In addition, ATF will disclose such proprietary or confidential business information to the extent required by other legal process.

C. Submitting Comments

Submit comments in any of three ways (but do not submit the same comment multiple times or by more than one method). Hand-delivered comments will not be accepted. Comments not satisfying these requirements may not be considered by ATF.

- *Federal eRulemaking Portal*: ATF recommends that you submit your comments to ATF via the Federal eRulemaking portal at *www.regulations.gov* and follow the instructions. Comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your

comment may not be viewable for up to several weeks. Please keep the comment tracking number that is provided after you have successfully uploaded your comment.

- *Mail*: Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments should appear in minimum 12-point font size (.17 inches), include the commenter's first and last name and full mailing address, be signed, and may be of any length. Mailed comments will be treated as timely if they are postmarked on or before the last day of the comment period.
- *Facsimile*: Submit comments by facsimile transmission to (202) 648-9741. Faxed comments must:
    1. Be legible and appear in minimum 12-point font size (.17 inches);
    2. Be on 8 ½" x 11" paper;
    3. Be signed and contain the commenter's complete first and last name and full mailing address; and
    4. Be no more than five pages long.

D. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director of ATF within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this proposed rule and the comments received in response to it will be available through the Federal eRulemaking portal, at www.regulations.gov (search for RIN 1140-AA55), and for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E-063, 99 New York Ave. NE, Washington, DC 20226; telephone: (202) 648-8740.

List of Subjects

27 CFR Part 478

Administrative practice and procedure, Arms and munitions, Exports, Freight, Imports, Intergovernmental relations, Law enforcement officers, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 479

Administrative practice and procedure, Arms and munitions, Excise taxes, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Transportation.

Authority and Issuance

For the reasons discussed in the preamble, 27 CFR parts 478 and 479 are proposed to be amended as follows:

PART 478—COMMERCE IN FIREARMS AND AMMUNITION

1. The authority citation for 27 CFR part 478 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 921–931; 44 U.S.C. 3504(h).

2. In § 478.11, add a sentence to the end of the definition of "rifle," to read as follows:

§ 478.11 Meaning of terms.

* * * * *

Rifle. * * * The term shall include any weapon with a rifled 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 Factoring Criteria for Rifled Barrel Weapons with Accessories commonly referred to as "Stabilizing Braces," ATF Worksheet 4999, published on [EFFECTIVE DATE OF THE FINAL RULE].

* * * * *

PART 479—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

3. The authority citation for 27 CFR part 479 continues to read as follows:

Authority: 26 U.S.C. 5812; 26 U.S.C. 5822; 26 U.S.C. 7801; 26 U.S.C. 7805

4. In § 479.11, add a sentence to the end of the definition of "rifle", to read as follows:

§ 479.11 Meaning of terms.

* * * * *

Rifle. * * * The term shall include any weapon with a rifled 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 Factoring Criteria for Rifled Barrel Weapons with Accessories commonly referred to as "Stabilizing Braces," ATF Worksheet 4999, published on [EFFECTIVE DATE OF THE FINAL RULE].

* * * * *

Dated: June 7, 2021.

Merrick B. Garland
Attorney General

[FR Doc. 2021-12176 Filed: 6/9/2021 8:45 am; Publication Date: 6/10/2021]