



ATF Regulations Coming: (re)Defining a "Firearm," Stabilizing Braces and Solvent Traps

By: Charles E. "Chuck" James, Jr. & Camden R. Webb

03.17.2022

The ATF has been and will be busy in the coming weeks and could issue new regulations before the **2022 Firearms Industry Conference (FIC)**, April 26 ? 27 in Atlanta, Georgia.

(re)Defining a "Firearm"

In May 2021, shortly before last year?s FIC, the ATF announced a proposed rule change. The rule, ATF 2021R-05, **?Definition of Frame or Receiver and Identification of Firearms,**? was introduced and signed by the Attorney General, consistent with the administrative process. In the following days and weeks, industry participants and many elected officials concluded the proposed rule would expand or redefine ?firearm frame or receiver? and ?frame or receiver,? amend the definitions of ?firearm? and ?gunsmith? and memorialize new definitions of ?firearm? and ?gunsmith.? These changes, if instituted, increase the ATF?s regulatory authority over an array of items, services and commerce, including manufacturers of firearms, suppressors, kits and privately made firearms. The regulations of firearms marking and associated record keeping are also impacted. Because of the significance of these changes, industry participants and others submitted thousands of comments before the comment period closed in August 2021.

Stabilizing Braces

In June 2021, the ATF proposed rule 2021R-08, **?Factoring Criteria for Firearms with Attached ?Stabilizing Braces.??** ATF?s proposed regulations were offered to ?clarify? when a rifle is ?intended to be fired from the shoulder.? The new rule, if implemented, would define a ?rifle? to include any weapon with a rifled barrel and equipped with an attached ?stabilizing brace? that has objective design features and characteristics indicating that the firearm is designed to be fired from the shoulder. ATF also issued ATF Worksheet 4999 ?Factoring Criteria for Rifled Barrel Weapons with Accessories commonly referred to as ?Stabilizing Braces,?? in which it outlined the criteria it considers when evaluating firearm samples that are submitted with an attached ?stabilizing brace? or similar component

or accessory. Numerous written and oral statements have asserted the proposed rule will not affect "stabilizing braces" that are objectively designed and intended as a "stabilizing brace," but would address only those products that are designed as a buttstock.

Consumers and industry are concerned the ATF is reversing earlier determinations regarding braces and that the rule could not only apply to new products but cause current "stabilizing braces" that have been in the marketplace for years to be deemed to be buttstocks. The result of such a change could cause any number of products to become regulated and to instantly turn any number of pistols into short barreled rifles (SBRs), such that they are governed by the National Firearms Act (NFA). The impacts on manufacturers and consumers are significant.

Solvent Traps and Form 1s

ATF has long recognized that an individual does not need a license to manufacture a firearm for personal use^[1]. Many hobbyists enjoy making and firing their own firearms and have manufactured suppressors in their home. With the advent of so called 80% lower kits, individuals have been able to more readily manufacture high quality firearms for personal use. More recently, consumers have adapted "solvent traps" and other unregulated items to manufacture items that look and act like NFA regulated suppressors. Once registered with the ATF and properly modified, a solvent trap or "Form 1 kit" can function as a suppressor and has gained in popularity. The Form 1 is used by applicants who are not licensed to manufacture National Firearms Act (NFA) regulated firearms.

Consumers and hobbyists found that the speed with which the ATF approved a Form 1 (Application to Make and Register a Firearm) versus an ATF Form 4 (Application for Tax Paid Transfer and Registration of Firearm) made this an attractive option. Wait times for suppressors were effectively reduced from a year to less than 30 days in many cases. However, several reports indicate that in February 2022, ATF changed its policies and began denying Form 1 applications. According to the NRA, "the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) denied approximately 850 Form 1 applications for prospective makers of suppressors. These denials were apparently made due to a change in ATF policy regarding certain devices that ATF contends are suppressor "parts kits."^[2]

Companies who were or are selling certain products subsequently used to assemble or manufacture a silencer will apparently be treated as though the components ARE a silencer such that possession, sale and alteration of these products, by companies or end users, subject themselves to significant criminal exposure. These developments warrant close attention as there are undoubtedly thousands of kits in homes and businesses across the country, and there may be thousands of individuals unwittingly running afoul of the ATF's view of the NFA.

These issues and other regulatory and compliance issues will be featured during the 2022 Firearms Industry Conference (FIC), April 26 - 27 in Atlanta, Georgia. Registration is open.

This alert is not intended as, and should not be taken as, legal advice. The use of the information provided here should not be taken as establishing any contractual or other form of attorney-client relationship. Do not act or refrain from acting based upon information provided here. Instead, consult with a qualified attorney about your factual and legal circumstances.

[1] 18 U.S.C. 922(o), (p) and (r); 26 U.S.C. 5822; 27 CFR 478.39, 479.62 and 479.105

[2] See, <https://www.nraila.org/articles/20220307/atf-mass-denial-of-suppressor-form-1-applications>

Related People

- Charles E. "Chuck" James, Jr. ? 804.420.6529 ? cjames@williamsmullen.com
- Camden R. Webb ? 919.981.4021 ? crwebb@williamsmullen.com

Related Services

- Firearms Industry