



441 G St. N.W.  
Washington, DC 20548

B-335007

February 16, 2023

The Honorable Richard J. Durbin  
Chairman  
The Honorable Lindsey Graham  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable Jim Jordan  
Chairman  
The Honorable Jerrold Nadler  
Ranking Member  
Committee on the Judiciary  
House of Representatives

Subject: *Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives:  
Factoring Criteria for Firearms with Attached “Stabilizing Braces”*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) entitled “Factoring Criteria for Firearms with Attached “Stabilizing Braces”” (RIN: 1140-AA55). We received the rule on February 2, 2023. It was published in the *Federal Register* as a final rule on January 31, 2023. 88 Fed. Reg. 6478. The effective date is January 31, 2023.

According to ATF, the final rule clarifies when a rifle is designed, made, and intended to be fired from the shoulder. Specifically, under the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (1968), and the National Firearms Act of 1934, June 26, 1934, chap. 757, 48 Stat. 1236, ATF states the definition of “rifle” shall include a weapon that is equipped with an accessory, component, or other rearward attachment (e.g., a “stabilizing brace”) that provides surface area that allows the weapon to be fired from the shoulder, provided other factors indicate that the weapon is designed, made, and intended to be fired from the shoulder.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The final rule was published in the *Federal Register* on January 31, 2023. 88 Fed. Reg. 6478. The final rule has a stated effective date of January 31, 2023. The *Congressional Record* does not indicate when either House of Congress

received the rule. Therefore, the final rule does not have the required 60-day delay in its effective date.<sup>1</sup>

Enclosed is our assessment of ATF's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Vivian Chu  
Acting Chief, Office of Regulatory Affairs  
Department of Justice

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<sup>1</sup> Though the rule's requirements are effective immediately, the final rule has a compliance date of May 31, 2023. ATF stated it would not begin enforcement actions until at least 60 days from publication of the rule to allow for a 60-day period for congressional review. However, CRA requires a delay in the effective date of the rule regardless of whether a delayed compliance date is established by the agency. 5 U.S.C. § 801(a)(3).

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF JUSTICE,  
BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES  
ENTITLED  
“FACTORING CRITERIA FOR FIREARMS  
WITH ATTACHED “STABILIZING BRACES””  
(RIN: 1140-AA55)

(i) Cost-benefit analysis

The Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) estimated the final rule would cost \$266.9 million a year at the seven percent discount rate and \$245.6 million a year at the three percent discount rate. ATF also stated the final rule would enhance public safety by reducing the criminal use of certain firearms, which are easily concealable from the public and first responders, as well as prevent manufacturers and individuals from circumventing legal requirements.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

ATF stated it conducted a Final Regulatory Flexibility Analysis. According to ATF, the Analysis can be found as part of the Regulatory Impact Analysis available as part of the administrative record.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

ATF determined the final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, of \$100 million or more (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On June 10, 2021, ATF published a proposed rule. 86 Fed. Reg. 30826. ATF received over 237,000 comments on the proposed rule from individuals, lawyers, government officials and interest groups. ATF addressed the comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

ATF determined the final rule contained information collection requirements (ICRs) subject to PRA. ATF stated the ICRs are associated with Office of Management and Budget (OMB) Control Numbers 1140-0011 and 1140-0012. ATF further stated the estimated burdens of the ICRs are included in the Regulatory Impact Analysis which is part of the administrative record.

Statutory authorization for the rule

ATF promulgated the final rule pursuant to section 552 of title 5, sections 847, 921–931 of title 18, sections 5812, 5822, 7801, and 7805 of title 26, and section 3504 of title 44, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

ATF stated OMB determined the final rule was economically significant.

Executive Order No. 13132 (Federalism)

ATF concluded the final 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.