



Ghost Guns, Stabilizing Braces, and Red Flag Laws: Overview of Recent Executive Actions on Firearms

April 23, 2021

On April 8, 2021, in the wake of mass shootings in [Georgia](#) and [Colorado](#), President Biden [announced](#) six executive actions seeking to address gun violence. One of the actions makes changes to federal funding streams across existing grant programs and seeks additional funding to promote investment in community violence intervention programs—for [example](#), programs that “deploy trusted messengers [to] work directly with individuals most likely to commit gun violence, intervene in conflicts, and connect people to social and economic services to reduce the likelihood of gun violence as an answer.” Two of the [other](#) actions (1) direct the Department of Justice (DOJ) to issue a report on firearms trafficking, which has not been undertaken since 2000, that is to be comprehensive and annually updated; and (2) announce the President’s nomination for Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

In addition to the actions mentioned above, the President’s recent announcement signals three further [actions](#) in areas of firearms regulation that have been of interest to Congress in recent years: (1) the proliferation of so-called “ghost guns”; (2) the availability of handguns with stabilizing or arm braces; and (3) the passage of “red flag” laws. This Sidebar provides a brief overview of, and legal context for, the three announced actions in these areas, as the specifics of proposed regulatory actions are [expected](#) in the coming months.

Ghost Guns

Under federal law, licensed manufacturers of firearms, i.e., persons or entities in the [business](#) of making firearms “for purposes of sale or distribution,” are required to [identify](#) each firearm manufactured with a serial number, which facilitates ATF’s ability to [trace](#) them if lost or used in crime. However, this requirement has created two legal spaces for firearms that can be made without affixing a serial number or other identifying markings. These unmarked firearms, which are difficult to trace because of their lack of identification, are sometimes [referred](#) to as “ghost guns.”

First, because only licensed manufacturers of firearms for purposes of sale or distribution are subject to the identification requirement, unlicensed individuals who wish to make a firearm solely for [personal use](#)

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are not obligated to comply with the requirement (though certain kinds of firearms manufactured for personal use are still subject to the more stringent requirements of the National Firearms Act (NFA), as discussed below). Second, the identification requirement applies only to the manufacture of a “firearm,” which is specifically **defined** by federal statute to include any weapon “which will or is designed to or may readily be converted to expel a projectile by the action of an explosive,” or “the frame or receiver of any such weapon.” A firearm “frame or receiver” is separately defined in federal **regulation** as the main part of a firearm that “provides housing” for other components. ATF has long **held** that so-called “80%” or “unfinished” firearm receivers that require a certain amount of additional machining “have not reached the ‘stage of manufacture’ which would result in the classification of a firearm according to” federal law. As such, these unfinished firearm components may be **sold** commercially, individually or in a “kit” with additional components and instructions for self-completion, without the need to include a serial number or other identifying markings. So long as purchasers intend to assemble the components themselves and only for personal use, they likewise need not comply with identification requirements. Compliance with certain other legal **requirements** for firearm sales, such as background checks, also is not required.

Some have **argued** that the availability of ghost guns should and can be further restricted in order to limit **access** to untraceable firearms by persons who wish to commit crime or who are prohibited by law from firearm possession. Others note **that** “the law already regulates the manufacture of firearms for sale no matter how the gun was created” and argue that imposing additional legal restrictions **would** impede an asserted right to make one’s own firearms.

The President’s recent actions address ghost guns by **instructing** DOJ, within 30 days of the announcement, to “issue a proposed rule to help stop the proliferation of these firearms.” Although the fact sheet describing the actions does not elaborate beyond this instruction, in announcing the actions, the President indicated that he would like “to see these kits treated as firearms” under federal law. It is possible that ATF might seek to accomplish this by amending the definition of “firearm frame or receiver” in federal regulations through agency **rulemaking**.

Ghost guns are sometimes described in tandem with undetectable firearms, which are firearms that can be made out of materials that can pass undetected through a metal detector or x-ray machine. Such firearms might also be made without affixing a serial number or other identifying markings. That said, undetectable firearms are subject to distinct legal **restrictions**, raise **distinct** legal issues, and do not appear to be the immediate subject of the recent executive action regarding ghost guns.

Stabilizing or Arm Braces

Firearms are regulated at the federal level largely under two statutory regimes: The Gun Control Act (**GCA**), which governs most kinds of commonly available firearms and **establishes** certain possession prohibitions (e.g., for convicted felons) and transfer requirements (e.g., purchases through a licensed dealer must be accompanied by a background check, and most sales across state lines are restricted), and the **NFA**, which regulates certain specific kinds of firearms deemed to be more **dangerous** and associated with **crime**. The NFA covers, among other things, **short-barreled rifles**, which are defined in part as weapons “designed or redesigned, made or remade, and intended to be fired from the shoulder” and having a barrel length of less than 16 inches. If a firearm falls into this definitional category, it is subject to additional **taxation**, **identification**, and **registration** requirements under the NFA, requirements beyond those imposed by the GCA.

As described in a recent CRS **product**, some kinds of handguns equipped with stabilizing or arm braces straddle the line between GCA regulation and the more-stringent NFA regulation. The issue is whether some handguns subject only to GCA regulation are, when equipped with a brace, considered to be “short-barreled rifles” such that they are subject to the additional NFA requirements. Arguably, most kinds of handguns are not designed, made, or intended to be “fired from the shoulder” and so do not meet the

definition of a “rifle” under the NFA. If used with certain braces, however, they **may** be, depending on the nature of the firearm, the brace, and how they are used together. For example, ATF has, in the past, **indicated** that attaching a stabilizing brace to a handgun and using it as a *forearm* brace does not make the firearm into a short-barreled rifle subject to the NFA. However, “an item that functions” as a *shoulder* stock “if attached to a handgun in a manner that serves the objective purposes of allowing the firearm to be fired from the shoulder may result in ‘making’ a short-barreled rifle, even if the attachment is not permanent.” On December 18, 2020, ATF **issued** a notice and request for comments with proposed guidance regarding what “objective design features” ATF would consider in determining whether a weapon with an attached stabilizing brace has been “designed or redesigned, made or remade, and intended to be fired from the shoulder” under the NFA. The guidance **indicated** that certain features of the firearm and design features of the stabilizing brace being used, among other things, would be assessed on a case-by-case basis. On December 23, 2020, the notice was **withdrawn** pending further DOJ review.

The question of whether handguns with stabilizing braces should be controlled under the NFA, and, if so, when, was **discussed** in recent weeks in **light** of reports that the man who allegedly shot multiple people in a Colorado supermarket **used** a Ruger AR-556 semiautomatic pistol with a stabilizing brace. Although handguns with certain braces may be used to fire the weapons from the shoulder, some have noted that brace-equipped firearms can **serve** legitimate purposes, such as providing additional assistance to disabled handgun-owners. President Biden’s recent executive actions address the status of handguns with stabilizing braces by **instructing** DOJ, within 60 days of the announcement, to “issue a proposed rule to make clear when a device marketed as a stabilizing brace effectively turns a pistol into a short-barreled rifle subject to the requirements of [NFA].”

Red Flag Laws

In recent years, a **number** of states have passed laws permitting courts to issue temporary orders, sometimes referred to as “extreme risk protection orders,” barring particular persons from possessing guns based on some showing of imminent danger to themselves or others. These so-called “red flag” laws generally provide procedures for certain persons to petition a court to order that firearms be temporarily taken or kept away from someone who poses a risk of committing gun violence. These state laws vary in details, but common elements **include** the following: (1) specifying persons such as family or household members who may petition a court for an extreme risk protection order; (2) providing for preliminary orders without notice to or appearance by the person who is the subject of the order, followed by final orders of longer duration after the person who is alleged to pose a risk of gun violence has been given notice and an opportunity to appear; (3) requiring some factual basis that the person for whom the order is sought poses a risk of using a firearm to harm himself or others, with the stringency of the evidentiary showing depending on whether a preliminary or final order is requested; (4) obligating the person who is the subject of the order to relinquish his or her firearms (if he or she possesses any) immediately or within a certain amount of time, and, in many states, authorizing issuance of a warrant for seizure by law enforcement.

Bills introduced in the 117th Congress would, among other things, **establish** a federal extreme risk protection order regime, **incentivize** additional states to adopt red flag laws, and/or criminalize possession of **firearms** by persons who are subject to extreme risk protection orders. Similar and additional legislation **was** previously **introduced** in the 116th Congress. Proponents of red flag laws assert **that** such laws could save lives by removing firearms from persons shown to be a risk to themselves or others, while opponents have **questioned** whether certain aspects of red flag laws could raise constitutional due process concerns if legislation is not sufficiently tailored. The President’s executive actions **include** an order that DOJ “publish model ‘red flag’ legislation” within 60 days of the announcement to make it easier for states that want to adopt red flag laws to do so. The fact sheet also “urges Congress to pass an

appropriate national ‘red flag’ law, as well as legislation incentivizing states to pass ‘red flag’ laws of their own.”

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