



State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

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Via e-filing at www.regulations.gov

Andrew Lange
Office of Regulatory Affairs, Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue NE
Washington, DC 20226

RE: Notice of Proposed Rulemaking: “Definition of ‘Frame or Receiver’ and Identification of Firearms.”
Docket No. ATF 2021R-05; AG Order No. 5051-2021 (May 21, 2021)

Dear Mr. Lange:

I write today in support of Proposed Rule Docket No. ATF 2021R-05; AG Order No. 5051-2021 (hereinafter “Proposed Rule”), published by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). This rule clarifies the definition of ‘Frame or Receiver’ and reverses prior determinations that functionally exempted a large portion of the firearms market—specifically the market for ghost guns—from the safety and regulatory requirements of the Gun Control Act of 1968 (GCA). For fifteen years, ATF has adhered to a narrow definition of what constitutes a “firearm.” This has helped create and sustain a burgeoning ghost gun industry legally able to sell untraceable, nearly completed firearms to children, prohibited persons, and anyone else seeking to circumvent the GCA. The California Department of Justice appreciates ATF’s leadership in amending this definition; the Proposed Rule would go a long way toward closing this yawning loophole and preventing the continued proliferation of ghost guns in America.

The GCA requires that any firearm sold or imported in the United States must have a unique serial number and that licensed gun dealers must maintain identifying records, including the serial numbers of guns they sell and the identity of the buyer. To effectuate the GCA’s goal of preventing prohibited purchasers from obtaining guns, the drafters of the GCA defined “firearm” broadly to include not only fully assembled, functional weapons but also items that are “designed to or may readily be converted” into fireable weapons, as well as the “receiver” or

“frame” of such weapons.¹ A firearm frame or receiver is the central component of a firearm that houses the hammer, bolt, or breechblock, as well as the firing mechanism.

“Ghost guns” are specifically designed to circumvent the GCA’s commonsense requirements. Built with what are commonly known as “80% receivers” or “80% frames”—nearly finished frames and receivers—ghost guns are often sold in do-it-yourself (DIY) gun kits that allow purchasers to create fully operable weapons in as little as fifteen minutes. These kits can be purchased by anyone with an internet connection and a credit card (as well as at gun shows and from brick-and-mortar gun stores). The recent explosion of ghost guns has occurred since ATF’s determination under previous administrations that 80% frames and receivers are not “firearms” under the GCA and are therefore not subject to serialization requirements of federal law.

Among other things, the Proposed Rule reverses this determination regarding “80% frames” and “80% receivers”, and requires ghost guns and their component parts to be serialized pursuant to the GCA. These changes are necessary to stem the tide of untraceable firearms and kits, and are consistent with both the plain language of the GCA and prior ATF positions. The Proposed Rule, when implemented, will also provide clarity to courts who may be interpreting the GCA for the purposes of determining which gun parts require serialization. Furthermore, the serialization requirements in the Proposed Rule bring federal law into conformity with serialization requirements already enacted in California, increasing the efficacy of both state and federal law and making it clear to law enforcement entities at both levels what is prohibited.

For these reasons and many others, the California Department of Justice commends ATF for the Proposed Rule, and respectfully requests that ATF consider the comments below.

A. Previous ATF Positions Allowed for an Explosion in Unserialized Ghost Guns.

Beginning in the early 1980’s and into the twenty-first century, ATF took the position that many unfinished receivers and frames identical to the 80% receivers and frames on the market today were “firearms” under the GCA.² Accordingly, buyers of these unfinished frames and receivers were required to undergo background checks to determine whether they were legally entitled to own a firearm. The agency’s conclusion, during this period, was based on an approach that analyzed how quickly and easily an unfinished receiver or frame could be turned into a fully functional firearm—that is, whether it could “readily be converted” to function as the firearm it was specifically designed to be.³ Using this “temporal” approach, ATF found that 80%

¹ See 18 U.S.C. § 921(a)(3).

² See, e.g., Letter from Edward M. Owen, Jr., Chief, Firearms Technology Branch, ATF, to Henry A. Roehrich, SGW Incorporated (May 3, 1983) (classifying as a firearm a partially completed receiver that could be completed with additional milling that took roughly “**75 minutes**”) (emphasis added).

³ See, e.g., Letter from Curtis H.A. Bartlett, Chief, Firearms Technology Branch, ATF, to Lane Browne, Mega Machine Shop, Inc. (Dec. 27, 2002) (classifying as a firearm each of the four “AR-15 type lower receiver samples” submitted for examination despite the fact that one of the samples had a “solid interior” because it could be finished in **approximately 75 minutes**) (emphasis added).

receivers that required some machining but could be finished in under 75 minutes or in a “minimal amount of time” qualified as “firearms.”⁴

But around 2006, ATF began changing course. ATF stopped considering whether a frame or receiver is “designed to or may readily be converted” into a functioning firearm under the GCA. Instead, ATF began to analyze which machining operations still needed to be performed to determine whether a partially completed receiver or frame is a “firearm” under the GCA. Under this approach, ATF concluded that 80% receivers with “fire-control cavity area[s] [that are] completely *solid and un-machined*” do not qualify as firearms under the GCA.⁵ From 2006 through today, ATF has continued to analyze 80% frames and receivers under the “machining operations” approach. ATF further memorialized the “machining operations” approach in a formal ruling (Ruling 2015-1, issued on January 2, 2015) regarding the manufacture and sale of ghost guns. This “machining operations” approach was reinforced in a series of ATF Classification Letters sent to leading ghost gun component manufacturers from approximately 2015 to current day.

As a result of this change in interpretation, there has been a massive uptick in the number of ghost guns tracked by ATF and other law enforcement agencies. According to ATF, as of 2019, 30% of all firearms it was recovering in California were unserialized.⁶ Data gathered by Giffords Law Center to Prevent Gun Violence found that in Los Angeles, the number of ghost guns recovered increased by 144% from 2015 to 2019. In San Francisco, *no* ghost guns were recovered in 2015, but beginning in 2016, ghost gun recoveries began to sharply rise – increasing by *1,517%* between 2016 to 2019. This upward trend is not isolated to California. Before 2016, for example, District of Columbia law enforcement had never recovered a ghost gun in the District. By 2019, law enforcement recovered 116 ghost guns in one year, before recovering another 106 ghost guns in just the first five months of 2020.⁷

⁴ See, e.g., Letter from Sterling Nixon, Chief, Firearms Technology Branch, ATF, to Robert Serva, Dan Wessons Firearms (Aug. 19, 2004) (classifying as a firearm a “1911-type semiautomatic pistol frame” because the frame “can be completed **in a minimal amount of time** by a competent individual having the necessary equipment”) (emphasis added).

⁵ See, e.g., Letter from Sterling Nixon, Chief, Firearms Technology Branch, ATF to Justin Halford (Apr. 24, 2006) (classifying an “AR-15 pattern receiver” as a “firearm” because the sample did not have a solid “trigger/hammer area”); see also Letter from John R. Spencer, Chief, Firearms Technology Branch, ATF, to Alan Aronstein, Hi-Standard Manufacturing Company (Sept. 28, 2012) (classifying as not “firearms” a “1911-type receiver blank” and “target-pistol type receiver blank” after analyzing which “**machining operations**” had been “partially or fully completed”) (emphasis added).

⁶ Alain Stephens, *Ghost Guns Are Everywhere in California*, THE TRACE (May 17, 2019), <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>; (last visited Aug. 18, 2021) see also David Chipman, *Ghost Guns Are Specifically Designed for Criminals*, Giffords.org (May 13, 2020), <https://giffords.org/blog/2020/05/ghost-guns-are-specifically-designed-for-criminals-blog/> (last visited Aug. 18, 2021).

⁷ *AG Racine Sues Gun Manufacturer Polymer80 for Illegally Advertising and Selling Untraceable Firearms to District Consumers*, OAG.GOV (June 24, 2020), <https://oag.dc.gov/release/ag-racine-sues-gun-manufacturer-polymer80> (last visited Aug 18, 2021).

Furthermore, the proliferation of fabrication kits has caused a dramatic increase in the number of homemade firearms seized by California law enforcement agencies over the past 5 years. California Department of Justice statistics report that while only 167 identifying numbers were issued to identify privately made firearms seized by law enforcement agencies in 2016, that number has more than doubled in each successive year.⁸ These identifying numbers were issued by the California Department of Justice 345 times in 2017 and 707 times in 2018. By 2019, a total of 1,623 identifying numbers were issued to document seized firearms that were not made by licensed manufacturers. The COVID-19 pandemic did nothing to slow the proliferation of homemade firearms; law enforcement agencies reported 4,671 homemade firearms in 2020, and another 3,904 between January 1 and May 31, 2021.

B. The Proposed Rule Closes the Ghost Gun Loophole.

a. Definition of Frame or Receiver

Consistent with the intent of the GCA, the Proposed Rule revises the definition of “frame or receiver” to do away with any “machining operations” guiding principle and instead focuses on the practical effect of the component part. The Proposed Rule defines “frame or receiver” as a part of a firearm that, when fully assembled, is visible from the exterior and houses one or more fire control components.⁹ The definition encompasses any partially complete, disassembled, or inoperable frame or receiver that “has reached a stage in manufacture where it may readily be completed, assembled, converted, or restored to a functional state.”¹⁰ Thus, 80% frames or receivers would qualify as firearms under the GCA and would be subject to its serialization requirements going forward.

The Proposed Rule also helpfully defines “fire control components” as any component that is necessary to initiate, complete, or continue the firing sequence.¹¹ This clarified definition also has the effect of including component parts for certain popular guns such as the Glock-Type or Sig Sauer models which do not use a hammer to fire, but rather use other fire control components.

Furthermore, the Proposed Rule also defines and includes split frames or multi-piece/modular frames as firearms under the GCA, which formerly fell outside of the regulatory framework.¹² Split frames or multi-piece/modular frames are component parts of several popular firearms, such as the AR-15, Beretta AR-70, Glock-type, and Sig Sauer models.

⁸ These statistics were collected by The California DOJ from California law enforcement agencies seeking to document ghost guns used in crimes.

⁹ See Proposed Rule 27 CFR § 478.11

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

California has already enacted a similar law regulating precursor parts and split or multi-part frames.¹³ That law, set to go into full effect in 2022, defines precursor parts broadly as any component of a firearm necessary to build or assemble a firearm such as an unfinished frame or receiver.¹⁴ Furthermore, split frames or multi-part frames are specifically included within the definition of unfinished frames under California law.¹⁵ The Proposed Rule thus minimizes what could otherwise be a potential inconsistency between California and Federal law regarding the definition of a frame or receiver for the purposes of regulating firearm components. This synthesis of definitions will help law enforcement officers quickly determine what is and is not a legally owned firearm.

b. Definition and Serialization of Privately Made Firearms

So that there may be no doubt as to whether certain categories of ghost guns or homemade gun kits are included, the Proposed Rule also adds a definition of Privately Made Firearm (PMF). The Proposed Rule defines a PMF as a firearm assembled by someone other than a licensed manufacturer.¹⁶ This definition is also consistent with California law, which defines “self-manufactured” or “self-assembled” firearms to include firearms that are “fabricated or constructed ... using a 3D printer or any other technology” or that were “fit together” from “component parts” in order “to construct a firearm.”¹⁷

The Proposed Rule requires Federal Firearm Licensees (hereinafter “licensees”) to serialize PMFs within seven days of receipt or acquisition of the PMF.¹⁸ For PMFs that were made or acquired prior to the effective date of the regulation, licensees are required to serialize those firearms within 60 days of the effective date of the regulation.¹⁹ Once implemented, both requirements will allow law enforcement agencies to more effectively track PMFs of all types, and reduce the overall number of untraceable firearms.

California law has had a similar requirement for PMFs in force since 2018.²⁰ Like the Proposed Rule, California law requires those possessing homemade firearms or those made by unlicensed manufacturers to register and serialize PMFs within a short period of time, in California’s case 10 days.²¹ Furthermore, residents from another state have 60 days to serialize such firearms after they relocate to California.²² By requiring licensees to serialize their firearms

¹³ See AB 879 (Gipson) 2019, found at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB879 (last viewed Aug. 18, 2021).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Proposed Rule 27 CFR § 478.11

¹⁷ 11 CCR § 5507

¹⁸ See Proposed Rule 27 CFR § 478.92(a)(1)(v).

¹⁹ See Proposed Rule 27 CFR § 478.92(a)(4)(vi).

²⁰ See Cal. Pen. Code §§ 29180-29184.

²¹ See Cal. Pen. Code § 29180(b)(1)-(2); and *id.* at (c)(1)-(2).

²² *Id.* at (4)(e).

within a reasonable time, the Proposed Rule will reduce the proliferation of ghost guns and provide law enforcement with a tool to seize illegal ghost guns, furthering the intent of the GCA.

c. Potential Improvements to the Proposed Rule

However, whereas California law requires all *owners* serialize PMFs, the Proposed Rule only extends requirements to serialize PMFs to *licensees*—that is, manufacturers, dealers, and importers, but not owners.²³ The practical effect of this limitation is that ghost guns that never pass through the hands of a licensee will be excluded from any sort of tracking requirement. For example, pre-existing PMFs which are owned by non-licensees will not be covered. Furthermore, while many PMFs assembled in the future for personal use will be covered by serialization requirements for their component frames or receivers, other PMFs, such as those made by 3D printing, may be entirely excluded. In short, PMFs which remain exclusively in the possession of non-licensees will be able to legally avoid the requirements of the GCA.

ATF should consider extending the serialization requirement for PMFs to owners as well as licensees so as to foreclose the possibility that any PMFs will remain untraceable under the Proposed Rule. ATF could require owners of PMFs to register those weapons after a reasonable timeframe, such as 60 days after the effective date of the regulation. Such a requirement would avert a potential loophole and ensure all PMFs are safely tracked by law enforcement.

C. Conclusion

In sum, the California Attorney General strongly supports the aims of ATF in addressing the proliferation of untraceable firearms through the Proposed Rule. We therefore urge ATF to consider additional ways to ensure that the Proposed Rule has the maximum possible beneficial effect when it is enacted. We appreciate your consideration of these comments and look forward to a continued partnership to promote safe and commonsense gun regulation broadly in California and beyond. Please do not hesitate to contact our office if you have any follow up questions or concerns.

Sincerely,



ROB BONTA
California Attorney General

²³ See, e.g., Proposed Rule 27 CFR § 478.92(a)(1)(v).