



Privately Made and Unmarked Firearms: Overview of ATF “Ghost Gun” Rule

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On April 7, 2021, President Biden announced [several](#) executive actions seeking to address gun violence, including instructions for the Department of Justice (DOJ) to issue a rule [addressing](#) so-called “ghost guns” that lack serial numbers or other identifying markings. The announcement came amidst [concern](#) from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) over its inability to trace unmarked firearms that have been used in shootings and other crimes in recent years.

In May 2021, ATF published a [proposed rule](#) addressing certain regulatory definitions relevant to identification requirements for firearms, among other things. On April 11, 2022, DOJ [submitted](#) ATF [final rule](#) 2021R-05F, “Definition of ‘Frame or Receiver’ and Identification of Firearms,” with the [stated](#) goal of “ensur[ing] the proper marking, recordkeeping, and traceability of all firearms manufactured, imported, acquired and disposed by” persons and entities federally licensed to engage in the firearms business (Federal Firearms Licensees, or “FFLs”). This Sidebar provides legal context for, and an overview of, the major components of the recent final rule.

Overview of Existing Firearm Identification Requirements

By statute, FFLs are [required](#) to “identify by means of a serial number engraved or cast on the receiver or frame of the weapon” each firearm manufactured in, or imported into, the United States. Existing regulations establish more detailed [requirements](#) for how the serial number must be affixed, including the minimum depth and print size, and require additional information such as the firearm model, caliber or gauge, and the FFL’s name and business location. Under the statutory [definition](#) of the term *firearm*, these identification requirements [extend](#) to firearm “frames or receivers.” The term *frame or receiver* is separately [defined](#) in regulations as “[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.” As described by ATF, a “frame or receiver” is [essentially](#) “the primary structural component[] of a firearm to which fire control components are attached.” The firearm identification requirements in statute and regulation facilitate ATF’s ability to [trace](#) firearms that are lost or used in crimes, as the chain of custody and distribution may be established using FFLs’ required records.

Not all firearms in the United States are subject to the identification requirements described above, however. First, the requirements apply only to FFLs, [meaning](#) that individuals who wish to make their

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own firearms for personal use need not identify or mark them. The process of making one's own firearm that is not subject to identification requirements has been increasingly facilitated in recent years by the commercial availability of "parts kits" that include firearm components and tools with which a functional weapon can be completed and assembled **relatively quickly and easily**. Some of these parts kits may include certain unfinished frames or receivers—sometimes referred to as "blanks," "billets," "castings," "machined bodies," or "80%" receivers—that ATF has not previously **considered** to have reached a stage of manufacturing that would make them subject to federal requirements such as interstate commerce restrictions, background checks, or marking obligations. Such components have been **sold** commercially, individually or in parts kits, without meeting such requirements.

Additionally, ATF's current definitions of *frame or receiver* do not expressly cover many types of **firearms** that, for instance, have receivers in multiple pieces or otherwise do not incorporate all of the components in the definitional language. According to ATF, such firearms **now** "constitute the majority of firearms in the United States." Thus, if read strictly, as **some** courts have done, the current definitional language could **mean** that many U.S. firearms would lack a frame or receiver currently subject to regulation, and manufacturers of split or multi-piece receivers would not need to comply with marking, background check, licensing, and recordkeeping requirements.

Privately made firearms that enter the stream of commerce without markings useful in tracing them, and that are subsequently **used** illicitly and recovered by law enforcement, are **sometimes** referred to as "**ghost guns**." ATF and other law enforcement authorities have **expressed** concern that the commercial availability of parts kits with unmarked, unfinished firearm frames or receivers could facilitate access to firearms by persons prohibited from possessing them, given that such kits can be sold without a background check. Conversely, others have **suggested** that the importance of serial numbers in firearm tracing is overstated and **that** additional marking requirements would be onerous and unnecessary.

ATF's April 2022 Final Rule

Primarily, ATF's April 2022 final rule makes changes to current regulatory definitions and requirements relevant to homemade and unmarked firearms. First, the rule amends ATF's regulatory definitions of *frame or receiver* to account for developments in firearms technology described above. The rule updates the regulatory definitions with **separate** sub-definitions for handgun "frames," non-handgun "receivers," and mufflers or silencers to clarify which part of each item will be considered either the frame or receiver, and it provides specific **examples** and pictures. Most **existing** ATF classifications of particular parts as frames or receivers are grandfathered in and will continue to be considered frames or receivers, as they were classified prior to publication of the rule. The new rule also expressly provides for how to **mark** for identification a "multi-piece frame or receiver," **meaning** a frame or receiver "that may be disassembled into multiple modular subparts." Under the **rule**, "the modular subpart that is the outermost housing or structure designed to house, hold, or contain" certain other components is the subpart of a multi-piece frame or receiver that must be identified.

With respect to firearm component kits and unfinished frames or receivers, the rule first **amends** the regulatory definition of *firearm* to include a "weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive." Regulatory definitions of *frame or receiver* also now **include** "a partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver." Articles that **have** "not yet reached a stage of manufacture" where they are "clearly identifiable as" unfinished component parts of weapons (such as unformed blocks of metal or raw materials) are excluded. The term *readily* is further **defined** as a "process, action, or physical state that is fairly or reasonably efficient, quick, and easy" (though not necessarily the most efficient, fastest, or easiest), and considers other factors such as the expertise and equipment required, parts needed and ease of acquiring

them, scope, feasibility, and expense. Among other things, persons seeking ATF classification of a partially complete, disassembled, or nonfunctional item or parts kit to determine whether it meets the new regulatory definitions must also **include** any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are made available by the seller. ATF, in turn, may **consider** the information or associated items provided in determining whether the submitted item or kit is a “frame or receiver.” And classification decisions from prior to the rule’s publication will **not** continue to be valid with respect to determinations that particular partially complete, disassembled, or nonfunctional frames or receivers, including parts kits, did not constitute or include frames or receivers.

With supplemented definitions in place, the rule adds requirements and clarifying language to facilitate the identification and tracing of parts kits, frames or receivers, and unmarked firearms that come into an FFL’s inventory. FFLs are currently required to comply with recordkeeping requirements related to their businesses, including maintaining records reflecting certain **information** (e.g., model and serial number) about the firearms possessed in inventory, received, and disposed of and completing records of firearm **transactions** with unlicensed persons. The rule supplements those requirements in the case of unmarked firearms and establishes express requirements for marking such firearms when received by an FFL. First, the rule **requires** FFLs to mark, or supervise the marking of, the frame or receiver of each “privately made firearm” that the FFL acquires within 7 days of acquisition or prior to further transfer, whichever is sooner. Privately made firearms acquired **before** the effective date of the rule must be marked within 60 days of the effective date or prior to final disposition, whichever is sooner. The term *privately made firearm* is **defined** as a “firearm, including a frame or receiver, completed, assembled, or otherwise produced by a person other than a licensed manufacturer, and without a serial number placed by a licensed manufacturer at the time the firearm was produced.” To facilitate access to marking, the rule amends certain regulatory terms to permit **gunsmiths** to provide professional marking services for privately made firearms. Additionally, the rule makes amendments to the regulations regarding FFL **recordkeeping** in order to clarify when and how, among other things, privately made firearms received in an FFL’s inventory are to be recorded and to **require** maintenance of FFL records indefinitely for tracing purposes (rather than the previously required 20 years).

Considerations for Congress

The new regulatory language and definitions appear to include as “firearms,” subject to federal identification and background check requirements, among other things, the kinds of parts kits with unfinished receivers that have previously been commercially available for home completion without meeting those requirements. Additionally, the rule establishes express obligations for the marking and recordkeeping of privately made firearms by FFLs in order to facilitate tracing when unmarked firearms pass through an FFL’s inventory and are subsequently tied to criminal conduct. The rule does not require private, unlicensed persons to mark or otherwise comply with new requirements regarding firearms they make at home for personal use, nor are FFLs required to take possession of unmarked firearms to identify them. To the extent such firearms must be marked and recorded under the rule, the onus falls on FFLs who manufacture or sell items or parts kits that are now expressly defined as “firearms” or who voluntarily receive unmarked firearms in their inventories.

As an executive-branch action implementing statutory terms and requirements, ATF’s new rule is subject to alteration or rescission by a future Administration (assuming compliance with legal requirements such as the **Administrative Procedure Act**). Some **state** and **local** laws may further regulate the making or possession of unmarked firearms. Additionally, Congress may opt to consider legislation codifying, or limiting, aspects of the rule should it agree or disagree with ATF’s action. For instance, several **bills** introduced in the 117th Congress would seek to curtail so-called “ghost guns” or untraceable firearms in various ways, such as by amending the statutory **definition** of *firearm* or **prohibiting** most **transfers** and possession of unmarked firearms. Codifying further restrictions on unmarked firearms could help avoid

any potential litigation challenging the rulemaking process or scope of authority surrounding ATF's recent final rule. Conversely, should Congress determine that the new rule sweeps too broadly, it could consider legislation defining terms such as *firearm* and *frame or receiver* to exclude certain kinds of parts kits or unfinished firearm components, which would supersede ATF's regulatory definitions.

The final rule is [effective](#) 120 days from the date of publication in the *Federal Register*.

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