



## **INFORMATION BULLETIN:**

# ***WHAT CALIFORNIA GUN OWNERS NEED TO KNOW ABOUT ATF'S FINAL RULE REGARDING FRAMES AND RECEIVERS***

**MAY 17, 2022**

On April 26, 2022, the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) released its [final rule](#) amending the definition of a firearm “frame or receiver” and other related federal regulations. As a federal rulemaking action, this change affects how firearms are regulated nationwide.

California already imposes strict requirements on what are commonly known as unfinished frames or receivers (or “80% receivers”). Beginning July 1, the sale or transfer of a “firearm precursor part” in California will require a background check like that used for the sale or transfer of ammunition. Unsurprisingly, CA DOJ’s regulations on the subject relied heavily on ATF’s now finalized rule.<sup>1</sup>

As a result, it is important for members and California gun owners to understand what the changes at the federal level mean, and what effects they have here in California. While our attorneys continue to analyze these changes, the following information has been prepared to better educate our members and California gun owners on the matter.

### **I. NEW FEDERAL DEFINITIONS FOR FIREARM AND FRAME OR RECEIVER**

For an item to be regulated under federal firearm laws, it must generally meet the definition of a “firearm” under section 921 of Title 18 of the United States Code. This section defines a firearm as any one of the following:

- Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- The frame or receiver of any such weapon;
- Any firearm muffler or firearm silencer; or,

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<sup>1</sup> See <https://crpa.org/news/blogs/doj-proposes-regulations-regarding-firearm-precursor-parts/>.

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- Any destructive device.<sup>2</sup>

Federal Regulations expand upon this definition to a limited degree. Notably, existing federal regulations define “firearm frame or receiver” to mean “that 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.”<sup>3</sup> With the release of the final rule, the definition for “frame or receiver” now provides:

- The term “frame” means the part of a handgun, or variants thereof<sup>4</sup>, that provides housing or a structure for the primary energized component designed to hold back the hammer, striker, bolt, or similar component prior to the initiation of the firing sequence (i.e., sear or equivalent), even if pins or other attachments are required to connect such component to the housing or structure.
- The term “receiver” means the part of a rifle, shotgun, or projectile weapon other than a handgun, or variants thereof, that provides housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence (i.e., bolt, breechblock, or equivalent), even if pins or other attachments are required to connect such component to the housing or structure.<sup>5</sup>

Recent federal court decisions, which held ATF’s classification of certain items as firearms inconsistent with existing federal law and regulations, are what prompted ATF to make this change. For example, one court decision held ATF’s classifications did “not comply with the rule making process” and the activities ATF sought to regulate “were not within the scope of the statute or ATF regulatory definition.”<sup>6</sup> In response, ATF proposed and has now finalized the above changes.

ATF’s final rule also includes “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” as meeting the definition of a “firearm.”<sup>7</sup> This means certain unfinished frames and receivers (i.e. 80% frames and receivers) sold with jigs and other tools necessary for completion will now be considered “firearms” for purposes of federal law. Key to this change, however, is that the weapon parts kit may be “readily” completed.

#### a. “Readily”

ATF’s final rule expressly defines the term “readily” to mean a “process, action, or physical state that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speediest, or easiest process, action or physical state.” What’s more, ATF has identified the following factors as relevant in this determination:

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<sup>2</sup> Note this definition expressly excludes antique firearms.

<sup>3</sup> 27 C.F.R. § 478.11.

<sup>4</sup> The term “variant” and “variants thereof” is defined as a weapon utilizing a similar frame or receiver design irrespective of new or different model designations or configurations, characteristics, features, components, accessories, or attachments.

<sup>5</sup> ATF’s final rule also provides several example illustrations of various firearm frames and receivers.

<sup>6</sup> See *United States v. Roh*, Case No. SACR 14-167 JVS (C.D. Cal. July 27, 2020).

<sup>7</sup> The regulations also state that a firearm **does not** include a weapon, including a weapon parts kit, in which the frame or receiver of such weapon is destroyed.

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- **Time:** How long it takes to finish the process;
- **Ease:** How difficult it is to do so;
- **Expertise:** What knowledge and skills are required;
- **Equipment:** What tools are required;
- **Parts availability:** Whether additional parts are required, and how easily they can be obtained;
- **Expense:** How much it costs;
- **Scope:** The extent to which the subject of the process must be changed to finish it; and,
- **Feasibility:** Whether the process would damage or destroy the subject of the process, or cause it to malfunction.

Exactly how ATF will apply the above factors remains to be seen. That said, industry sources tell us that kits made using polymer plastic type materials will likely be classified by ATF as weapon parts kits that may be “readily” completed into a firearm. This means any manufacturers of unfinished polymer frame kits will need to serialize the unfinished frame or receiver in accordance with federal law.

### b. Privately Made Firearm (“PMF”)

ATF’s final rule also adopts a new definition for “privately made firearm” to include “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.”<sup>8</sup> Notably, ATF’s final rule *does not* require individuals to mark their privately made firearms with serial numbers. However, owners of privately made firearms should understand that if they wish to have their firearm serviced by a licensed gunsmith, ATF’s final rule will generally require the gunsmith to mark the firearm with a serial number *unless* the firearm is returned to the owner on the same day it was received (i.e., the gunsmith did not need to record the firearm as part of their inventory for recordkeeping purposes). But as discussed below, California’s restrictions should also be considered.

## II. EFFECTS OF ATF’S FINAL RULE ON CALIFORNIA GUN OWNERS

As previously mentioned, beginning July 1, 2022, sales or transfers of any “firearm precursor part” will require a background check in California. But it remains unclear what exactly is considered a “firearm precursor part” for purposes of this restriction. This is because CA DOJ’s recently adopted definition uses the same “readily be completed” language ATF uses which, as noted above, is not clear. What’s more, CA DOJ’s regulations also adopt the same definition and factors used to determine whether a particular item may be “readily” completed into a firearm.

Unlike federal law, however, there is no mechanism for a California licensed firearms dealer or gun owner to request clarification and/or guidance from CA DOJ as to whether a particular item will be labeled a “firearm precursor part” for purposes of the restrictions beginning July 1.<sup>9</sup> It is also possible that CA DOJ may

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<sup>8</sup> This definition expressly *does not* include a firearm registered under the NFA, or any firearm manufactured on or made before October 22, 1968 (i.e., curio and relic firearms).

<sup>9</sup> Under federal law, businesses and individuals can at least request a determination from ATF as to whether a particular item would meet the new definition of firearm under its final rule. No such mechanism exists under California law, however.

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disagree with ATF’s classification regarding a particular item, and despite the identical definitions and factors found in federal regulations, nothing binds DOJ to follow ATF’s determinations. Given these issues, the sale or transfer of anything that could potentially be labeled a “firearm precursor part” but not a “firearm” under ATF’s final rule should be treated as a “firearm precursor part” until further clarification can be obtained.

That said, lawfully acquiring a “firearm precursor part” in California isn’t the only restriction to be concerned with. Since July 2018, prior to completing an unfinished frame or receiver into a functional firearm, individuals must apply to CA DOJ for a unique serial number to be engraved on the firearm.<sup>10</sup> These restrictions require firearms made from polymer plastic to have at least 3.7 ounces of stainless steel embedded within the plastic where the serial number can be engraved.<sup>11</sup> What’s more, individuals are also prohibited from completing an “unsafe handgun” (i.e., a handgun not listed on California’s roster).

### III. EFFECTS ON CALIFORNIA FIREARM BUSINESSES

Despite having little impact on individual gun owners in California, ATF’s final rule makes significant changes to the way FFLs and California Licensed Firearm Dealers conduct business. In the coming weeks, we will publish additional information addressing the many nuances of ATF’s final rule—particularly its effect on licensed firearm dealers and firearm-related businesses here in California.

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<sup>10</sup> For more information regarding this process, visit <https://oag.ca.gov/firearms/usna>.

<sup>11</sup> Cal. Pen. Code § 29180(b)(2)(B).

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