

August 19, 2021

***VIA Federal eRulemaking Portal***

The Honorable Merrick E. Garland  
U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
99 New York Avenue NE  
Washington, DC 20226

Re: Comment on Proposed Rule entitled “Definition of ‘Frame or Receiver’ and Identification of Firearms”; Docket No. ATF 2021R–05 (86 Fed. Reg. 27,720 (May 21, 2021))

Dear Attorney General Garland:

Access to unregulated firearms is growing. At the same time, communities across the country are being devastated by a rise in gun crimes. Both trends follow in part from the failure of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ existing regulations to fully encompass all firearms that are properly subject to the Gun Control Act of 1968. *See* Pub. L. No. 90-618, 82 Stat. 1213 (1968). Indeed, because existing regulations that interpret and implement the Gun Control Act have been read not to apply to some firearms that are properly subject to that statute, items that meet the statutory definition of “firearm” can be accessed in many states without the Act’s required background check and by individuals that the Act categorically prohibits from obtaining a firearm. Certain firearm dealers have capitalized on these regulatory loopholes and actively promote that so-called “ghost guns”—meaning weapon kits or partially complete frames or receivers that can easily be converted into unserialized, operable weapons—can be purchased unencumbered by federal regulation.

The Bureau’s proposed rule, *Definition of ‘Frame or Receiver’ and Identification of Firearms*, 86 Fed. Reg. 27,720 (May 21, 2021), takes a significant step toward remedying this problem. It does so by providing definitions for “firearm”; “frame or receiver”; and “readily,” that clarify the broad range of modern firearms the Gun Control Act is meant to cover. The newly proposed definitions leave no doubt that ghost guns, and other firearms now treated as beyond federal regulation, are indeed subject to the Gun Control Act and federal regulation. The Bureau’s reexamination of these terms’ meaning under federal law is all the more important because many state agencies and courts follow the Bureau’s lead when interpreting similar state laws. New federal regulations, and the state efforts that will follow, will help curb the current wave of gun violence.

We commend the Bureau for undertaking this much-needed rulemaking and, on behalf of Pennsylvania, the District of Columbia, New Jersey, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, and Wisconsin,

we write to express our enthusiastic support for the Bureau’s reassessment of the meaning of certain terms used in the Gun Control Act. We also write to suggest ways in which the Bureau may improve upon the proposed rule as it takes the important step of finalizing these essential regulations.

**1. The Bureau’s Current Interpretation of the Gun Control Act Contributes to Increasing Violence in our States**

*a. The Bureau’s Current Regulations Fail to Properly Enforce the Gun Control Act*

Congress passed the Gun Control Act in 1968 to respond to “the widespread traffic in firearms and [] their general availability to those whose possession thereof was contrary to the public interest.” *Huddleston v. United States*, 415 U.S. 814, 824 (1974). The Act has “twin goals”: “to keep guns out of the hands of criminals and others who should not have them, and to assist law enforcement authorities in investigating serious crimes.” *Abramski v. United States*, 573 U.S. 169, 180 (2014). Most relevant here, the Act accomplishes its objectives by restricting who may obtain a firearm, and under what circumstances. 18 U.S.C. § 922. To ensure compliance with those restrictions, the Act imposes strict licensing and regulation requirements on the firearms industry. *Id.* § 923. The Act also demands that any gun that moves in interstate commerce bear a serial number, and it imposes detailed record retention requirements on federal licensees. *Id.* § 923(g), (i). The Bureau helpfully summarizes the Act’s provisions on its website.<sup>1</sup>

For the Gun Control Act to work as Congress envisioned, the manufacture, transfer, and possession of firearms must all occur within the Act’s strictures. When any of that activity happens beyond the Act’s parameters, the Gun Control Act cannot “keep guns out of the hands of criminals and others who should not have them” or “assist law enforcement authorities in investigating serious crimes,” as the statute is supposed to do. *Abramski*, 573 U.S. at 180. So to the extent that any “firearm” is unregulated, the objectives of the Gun Control Act are defeated.

The Gun Control Act defines the “firearms” it governs as “(A) 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; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.” 18 U.S.C. § 921(a)(3). Neither “frame or receiver” nor “may readily be converted” is statutorily defined.

The Bureau’s current implementing regulations reiterate the definition of “firearm” and independently define “frame or receiver.” 27 C.F.R. §§ 478.11, 479.11. For now, “frame or receiver” is defined as “[t]hat part of a firearm which provides housing for the hammer, bolt or

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<sup>1</sup> <https://www.atf.gov/rules-and-regulations/gun-control-act>.

breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.” *Id.* § 478.11; *accord id.* § 479.11. In 2015, the Bureau determined that its definition of “frame or receiver” did not cover weapon parts that require “minor drilling and machining activities in or on the fire control area or other critical areas”—*i.e.*, parts that are solid in certain areas.<sup>2</sup> The Bureau’s interpretation of its regulation had no foundation in the Gun Control Act.

The Bureau has not yet promulgated any regulatory definition of “may readily be converted.” Nor has the Bureau, to date, regulated products that are “designed to or may readily be converted” into an operable weapon despite the Gun Control Act defining “firearm” to include such items. 18 U.S.C. § 921(a)(3)(A). The Bureau’s non-enforcement of this statutory language has created room for firearm manufacturers and dealers to defy the statute.

*b. Manufacturers and Dealers Exploit the Bureau’s Existing Regulations to Build and Sell Firearms Without Federal Oversight*

Recent developments have exposed that the existing regulatory definitions of “firearm” and “frame or receiver”—as well as the failure to regulate products that are designed as, or may be readily converted into, a functioning weapon—have allowed the widespread manufacture and sale of firearms that are subject to the Gun Control Act’s strict framework, but not regulated as such. These regulatory gaps have effectively sanctioned the meteoric rise of a gun industry that operates without oversight. This industry, which is populated mostly by non-licensees, relies on the narrow regulatory definitions to ensure that its products fall just short of how the Bureau currently defines “firearm.” By doing so, the industry can engage in the unlicensed and federally unregulated sale of unserialized products that are designed to function as a weapon, and can be easily converted into one. When purchasers later complete the simple conversion process, the resulting unserialized weapon is untraceable by law enforcement and uniquely appealing to those who engage in criminal activity.

Unserialized guns take several forms. Most commonly, they are guns that have been assembled after the unregulated purchase of a weapon parts kit or of a partially complete handgun frame or receiver. Polymer80’s “80% Pistol Frame Kit,”<sup>3</sup> and its “80% AR Receiver Kit”<sup>4</sup> are emblematic products. The Bureau has sanctioned the federally unregulated sale of some of these products via determination letters, issued directly to ghost gun manufacturers and dealers, declaring that these dangerous weapons are not sufficiently complete to be considered “firearms” under federal law.<sup>5</sup> The ghost gun industry relies on that definition to produce and sell thousands of deadly weapons across the United States with no serial numbers and no background checks. The industry ensures that its handgun frames and semi-automatic receivers do not meet

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<sup>2</sup> <https://www.atf.gov/file/11711/download>.

<sup>3</sup> <https://www.polymer80.com/pistols/80percentpistolkits>.

<sup>4</sup> <https://www.polymer80.com/arreceivers>.

<sup>5</sup> <https://www.polymer80.com/CMS-Images/ATF-DetLetters.pdf>.

the Bureau's 2015 interpretation of "frame or receiver" by simply not drilling into the frame or receiver, shipping the mostly finished frame or receiver to purchasers, and then providing detailed instructions for the purchaser to finish the firearm at home, often in minutes.<sup>6</sup> Some retailers specifically promote kits and partially complete receivers as not being subject to federal regulation,<sup>7</sup> and boast that the federally unregulated sale of their products is legal.<sup>8</sup> For example, until recently Polymer80 claimed on its website that federal regulations do not prohibit a person with a past felony conviction from purchasing its 80% kit.<sup>9</sup> And 80% Arms, another retailer, promotes its partially complete receivers as available without "background check or registration."<sup>10</sup> Other retailers attempt to further insulate their kits from federal regulation by requiring that online purchasers buy in separate transactions the parts that will be used to assemble an operable weapon.<sup>11</sup>

But as discussed more below, *see infra* Section 2.b, these products certainly are within the Gun Control Act's definition of "firearm" because they are designed as, and can easily be converted into, an operable weapon. For example, Polymer80 advertises and sells kits that include all parts and tools needed to easily convert the kit's parts into an operable weapon.<sup>12</sup> Polymer80 has also sold "Buy Build Shoot Kits," which include "all the necessary components to build a complete pistol", such as a "frame kit, complete slide assembly, complete frame parts kit, 10 or 15 round magazine and a pistol case."<sup>13</sup>

Beyond kits and partially complete frames and receivers, the Bureau's existing regulations leave unregulated the frame or receiver of weapons with a split or modular design. As the Bureau is aware, weapons designed with split or modular receivers often have no part that houses all of the "hammer, bolt or breechblock, and firing mechanism" while also being "threaded at its forward portion to receive the barrel." 27 C.F.R. § 478.11; *accord id.* § 479.11. Several courts recently have relied on that existing definition to conclude that the receiver of such a weapon, alone, is outside the Gun Control Act's reach. *See United States v. Rowold*, 429 F. Supp. 3d 469, 476-77 (N.D. Ohio 2019); *United States v. Jimenez*, 191 F. Supp. 3d 1038, 1041-45 (N.D. Cal. 2016). As one court observed, accepting the Bureau's current definition of "frame or receiver" as the correct interpretation of Congress's use of that term means that any receiver that does not house all of the "hammer, bolt or breechblock, and firing mechanism" is not covered under the Gun Control Act. *Rowold*, 429 F. Supp. 3d at 476-77. The proposed rule

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<sup>6</sup> <https://www.polymer80.com/how-to-manuals> (providing a series of written instructions on how to complete firearms along with links to instructional videos).

<sup>7</sup> <https://ghostgunner.net/index.php> (explaining that there is "No registration or serialization required" for its kits).

<sup>8</sup> Before being sued by the District of Columbia, Polymer80 had language on its website saying "Is it legal?" and exclaiming "YES!"

<sup>9</sup> Formerly accessible at <https://polymer80.happyfox.com/kb/article/24-are-felons-restricted-from-owning-a-firearm-that-was-built-from-an-80-receiver/>.

<sup>10</sup> <https://www.80percentarms.com/blog/buying-guns-online-without-ffl/>.

<sup>11</sup> <https://www.80percentarms.com/products/gst-9-80-pistol-build-kit/>.

<sup>12</sup> <https://www.polymer80.com/PF9SS-80-Single-Stack-Pistol-Frame-Kit-OD-Green> (noting that "[c]omplete Finishing Jig and Drill Bits are included").

<sup>13</sup> <https://americanweaponscomponents.com/product/polymer80-pf940c-buy-build-shoot-bbs-15-round-magazine>.

recognizes that adhering to that court's decision would mean that as many as 90% of all frames or receivers in the United States may not be regulated. 86 Fed. Reg. at 27,722.

Weapons created through the use of additive manufacturing, such as through the use of a 3D printer, are an additional form of federally unregulated firearm that is now widely available. Indeed, federal law does not stop the files used for printing an unserialized weapon from being freely exchanged within the United States. Some of these files can be used to print a working firearm made almost entirely of polymer, making these guns uniquely dangerous because they are undetectable by a standard metal detector.

*c. The Proliferation of Federally Unregulated Firearms Harms Our States*

The narrowness of the current regulations has severe real-world consequences. As the current presidential Administration has warned, the country is experiencing a surge in gun violence.<sup>14</sup> In 2020, large cities saw a 30% increase in homicides relative to 2019.<sup>15</sup> Gun assaults rose 8% from 2019 to 2020 in the same cities.<sup>16</sup> For 2021's first quarter, homicide rates in large cities were 24% higher than they were for 2020's first quarter, and gun assaults were up by 22%.<sup>17</sup>

Data from certain cities is as worrisome. In 2021, there were 22% more homicides in Philadelphia between January and mid-August than there were for the same period in 2020.<sup>18</sup> Chicago's year-to-date numbers show shootings are up by 15% relative to 2020, and there have been 10% more shooting victims.<sup>19</sup> As of July 2021, Los Angeles had a 28.9% jump in homicides relative to the same 2020 period and a 47.5% increase relative to the same 2019 period.<sup>20</sup>

As communities across the country experience these frightening trends, more unserialized firearms are being discovered nationwide. The Philadelphia Police Department, for example, recovered 287 unserialized guns in the first half of 2021.<sup>21</sup> More than 9% of all guns recovered following a gun crime in Philadelphia were unserialized.<sup>22</sup> In 2019, Philadelphia police recovered just 95 unserialized guns, and unserialized guns were only 2.23% of all guns recovered

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<sup>14</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/>.

<sup>15</sup> [https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid\\_commission/Year\\_End\\_Crime\\_Update\\_Design.pdf](https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid_commission/Year_End_Crime_Update_Design.pdf)

<sup>16</sup> [https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid\\_commission/Year\\_End\\_Crime\\_Update\\_Design.pdf](https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid_commission/Year_End_Crime_Update_Design.pdf).

<sup>17</sup> <https://covid19.counciloncj.org/2021/05/21/impact-report-covid-19-and-crime-4/>.

<sup>18</sup> <https://www.phillypolice.com/crime-maps-stats/>.

<sup>19</sup> <https://www.nbcchicago.com/news/local/chicago-gun-violence-461-shootings-reported-in-july-up-15-from-last-year/2575176/>.

<sup>20</sup> <http://lapd-assets.lapdonline.org/assets/pdf/cityprof.pdf>.

<sup>21</sup> Data on file with the Pennsylvania Office of Attorney General.

<sup>22</sup> Data on file with the Pennsylvania Office of Attorney General.

after a gun crime.<sup>23</sup> Similarly, the District of Columbia’s Metropolitan Police Department recovered three unserialized guns in 2017, but recovered 263 of them in 2020, which was 13% of all recovered guns. In Chicago, police recovered 139 unserialized guns in 2020, having recovered just two in 2016.<sup>24</sup> Likewise, Baltimore police recovered 126 unserialized guns in 2020 and by July 2021 had already recovered over 140; in 2019, that police department recovered just 29 unserialized guns.<sup>25</sup> Los Angeles police seized more than 700 unserialized guns in 2020, which was about 40% of all guns recovered in the city.<sup>26</sup> In New Jersey, 55 unserialized guns were recovered in 2019 out of 3,385 total gun recoveries (1.62%); 101 were recovered in 2020 out of 3,375 total gun recoveries (2.99%); and 122 had already been recovered in 2021 as of July 15 out of 2,154 total gun recoveries (5.66%).<sup>27</sup> All this data almost certainly underreports the proliferation of federally unregulated firearms. The Bureau correctly noted that likelihood in its own data review. 86 Fed. Reg. at 27,722-723 n.18.

And while the data is not yet complete enough to comprehensively describe who is accessing weapon parts kits and partially complete receivers to construct unserialized firearms, there is no doubt that individuals whom the Gun Control Act categorically prohibits from accessing a firearm for reasons such as prior criminal convictions are in that group. As mentioned, until just recently Polymer80 specifically noted on its website that a person with a past felony conviction can purchase its 80% kit.<sup>28</sup> And 80% Arms, another retailer, promotes its partially complete receivers as available without “background check or registration.”<sup>29</sup>

So far in 2021, 56 people who are prohibited from possessing a firearm because of a past conviction for a violent felony have been arrested in Philadelphia with an unserialized gun.<sup>30</sup> Another 46 people with a past conviction for a gun crime have been arrested in Philadelphia in 2021 with an unserialized gun.<sup>31</sup> Baltimore recovered 29 unserialized guns in 2020 from people below the legal age to possess a firearm in Maryland, including one fourteen year old.<sup>32</sup> Last year, a thirteen-year-old in Cambridge, Massachusetts was discovered to have built dozens of unserialized guns from home.<sup>33</sup> Men in both Washington and Massachusetts with lengthy criminal histories were arrested with a vast array of firearms, including some unserialized

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<sup>23</sup> Data on file with the Pennsylvania Office of Attorney General..

<sup>24</sup> <https://wgntv.com/news/chicagocrime/ghost-guns-seized-by-chicago-police-steadily-rising-as-biden-administration-plans-to-target-them/>.

<sup>25</sup> [https://www.youtube.com/watch?v=5T\\_EkGGPsVQ](https://www.youtube.com/watch?v=5T_EkGGPsVQ); <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-police-arrest-20210707-gzjnh7jubzf5bmjnfgrwhy5x4-story.html>.

<sup>26</sup> <https://www.latimes.com/california/story/2021-02-17/ghost-gun-maker-polymer80-lawsuit-los-angeles>.

<sup>27</sup> Data on file with New Jersey State Police.

<sup>28</sup> Formerly accessible at <https://polymer80.happyfox.com/kb/article/24-are-felons-restricted-from-owning-a-firearm-that-was-built-from-an-80-receiver/>.

<sup>29</sup> <https://www.80percentarms.com/blog/buying-guns-online-without-ffl/>.

<sup>30</sup> Data on file with the Pennsylvania Office of Attorney General.

<sup>31</sup> Data on file with the Pennsylvania Office of Attorney General.

<sup>32</sup> [https://www.youtube.com/watch?v=5T\\_EkGGPsVQ](https://www.youtube.com/watch?v=5T_EkGGPsVQ); <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-police-arrest-20210707-gzjnh7jubzf5bmjnfgrwhy5x4-story.html>.

<sup>33</sup> <https://www.wcvb.com/article/ghost-guns-growing-appeal-to-criminals-in-massachusetts/31096120>.

firearms;<sup>34</sup> the Massachusetts man also had “several high-capacity magazines, templates to make ghost guns, a DVD called ‘How to build your untraceable AR-15 at home’ and ‘a copy of ‘Mein Kampf.’”<sup>35</sup>

It is hardly surprising that individuals without legal access to firearms would resort to these untraceable weapons, or that those weapons would be used to commit crimes. Accessing a firearm that lacks the serialization required under the Gun Control Act makes it harder to connect the firearm with either its source or its unlawful user. For these reasons, several courts have observed the inherent appeal that unserialized firearms have for people who intend to use a firearm for a dangerous or illegal purpose. The Third Circuit explained that “[f]irearms without serial numbers are of particular value to those engaged in illicit activity because the absence of serial numbers helps shield recovered firearms and their possessors from identification.” *United States v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010). The Tenth Circuit noted that a defendant had described the lack of a serial number as the best part of an assault rifle. *United States v. Trujillo*, 817 F. App’x 634, 636 (10th Cir. 2020).

Available data is starting to confirm that people who are accessing unserialized firearms are using them to commit crimes. For example, since the start of 2020, at least 37 unserialized guns have been used in a shooting in New Jersey.<sup>36</sup> Of the 126 unserialized guns recovered in Baltimore in 2020, 21 were connected to a violent crime, including 15 shootings or homicides.<sup>37</sup>

Because the Bureau’s current regulations do not apply to a large class of firearms that are properly subject to the Gun Control Act, there is little federal authorities can do to control the transfer or possession of those firearms. As things stand, federal regulations do not require sellers of kits or of partially complete frames or receivers that meet § 921’s definition of “firearm” to conduct background checks on purchasers. People that Congress has categorically determined should not be permitted to obtain a gun thus have an easy workaround. Those realities produce a major hole in the federal regulation of firearms that federal authorities must work to close.

States can, and do, take an active part in regulating firearms under their own laws. In 2020, the District of Columbia enacted legislation that expressly bans the sale or transfer of ghost guns. D.C. Act 23-245. In 2018, New Jersey Governor Murphy signed legislation making it illegal to purchase firearm parts (separately or as part of a kit) to manufacture an unserialized firearm. N.J.S.A. 2C:39-9(k). Since 2019, Washington has prohibited the manufacture of ghost guns with intent to sell them, and also prohibits the manufacture or possession of undetectable weapons. Wash. Rev. Code 9.41.190, .325.

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<sup>34</sup> <https://www.heraldnet.com/news/supervised-edmonds-felon-accused-of-having-ghost-gun-arsenal/>;  
<https://www.wcvb.com/article/ag-winthrop-massachusetts-man-had-untraceable-ghost-guns-ammo-in-apartment/33513995>

<sup>35</sup> <https://www.wcvb.com/article/ag-winthrop-massachusetts-man-had-untraceable-ghost-guns-ammo-in-apartment/33513995>.

<sup>36</sup> Data on file with New Jersey State Police.

<sup>37</sup> [https://www.youtube.com/watch?v=5T\\_EkGGPsVQ](https://www.youtube.com/watch?v=5T_EkGGPsVQ).

In addition to states' legislative efforts, state Attorneys General have filed civil and criminal actions against gun dealers for unlawfully selling ghost guns. New Jersey, for example, announced today the indictment of 11 members of a criminal organization charged with operating an illegal weapons trafficking operation which included the sale of numerous ghost guns.<sup>38</sup> The State also recently resolved a lawsuit filed against one ghost gun manufacturer for violations of state law after securing an agreement from the manufacturer to stop selling its guns in New Jersey. Final Consent Judgment, *Grewal v. Tromblee*, No. ESX-C-63-19 (N.J. Super. Ct. Ch. Div. Mar. 16, 2021). Similarly, the District of Columbia sued Polymer80 for violating local law by selling firearms to District residents.<sup>39</sup>

Still, new regulations from the Bureau are necessary to limit the distribution of undetectable firearms and to respond to the current wave of gun violence. As a factual matter, many states follow the Bureau's lead when interpreting the scope of their own gun laws. *See, e.g., Landmark Firearms LLC v. Evanchick*, No. 694 M.D. 2019, Slip Op. at 3 (Pa. Commw. Ct. Jan. 31, 2020) (noting that until recently Pennsylvania State Police has interpreted state gun law "in lock-step with ATF's practices and regulations, including the ATF's definition of 'firearm frame or receiver'"). In Maryland, the legislature has enacted gun laws that it expects "to be read consistent with federal law." *Moore v. State*, 983 A.2d 583, 595 (Md. Ct. Spec. App. 2009). More importantly, federal regulations are needed because firearms easily move across state lines. There are limits to what any one state can do in response to an inherently national problem.

For all these reasons, we applaud the Bureau for revisiting how to best interpret the Gun Control Act. This is a national problem that cannot be fully resolved without national action.

## **2. The Proposed Rule Regulates Firearms as Congress Intended**

The Bureau's proposed rule goes a long way toward resolving problems with the existing regulations. It does so by interpreting terms used in the Gun Control Act in a way that achieves what Congress intended to accomplish through that statute.

### *a. The Gun Control Act Must Be Interpreted Consistently with Congressional Intent*

Congress's "principal purpose" when passing the Gun Control Act was "to curb crime by keeping 'firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.'" *Huddleston*, 415 U.S. at 824 (quoting S. Rep. No. 1501, 90th Cong., 2d Sess., 22 (1968)); *accord Abramski*, 573 U.S. at 181. Congress advanced that objective not merely by restricting firearm sales but by "broadly keeping firearms away from the persons Congress classified as potentially irresponsible and dangerous. These persons are

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<sup>38</sup> <https://www.njoag.gov/acting-ag-bruck-announces-criminal-charges-against-gun-trafficking-ring-that-sold-assault-rifles-untraceable-ghost-guns-into-new-jersey/>.

<sup>39</sup> <https://oag.dc.gov/release/ag-racine-sues-gun-manufacturer-polymer80>.



comprehensively barred by the Act from acquiring firearms by any means.” *Barrett v. United States*, 423 U.S. 212, 218 (1976) (cleaned up).

Broadly controlling access to firearms was the focal point of the law because “Congress determined that the ease with which firearms could be obtained contributed significantly to the prevalence of lawlessness and violent crime in the United States.” *Huddleston*, 415 U.S. at 824 (citing S.Rep. No. 1097, 90th Cong., 2d Sess., 108 (1968)). Indeed, when Congress passed the Gun Control Act it was specifically concerned with “widespread traffic in firearms and with their general availability to those whose possession thereof was contrary to the public interest.” *Id.* As one Member of Congress said, the Gun Control Act “seeks to maximize the possibility of keeping firearms out of the hands” of certain people. *Id.* at 828 (citing 114 Cong. Rec. 21,784 (1968)).

Maintaining fidelity to Congress’s purpose has been a consistent theme in the Supreme Court’s interpretation of the Gun Control Act. In *Huddleston*, the Court considered whether the prohibition against making false statements during the acquisition of a firearm applied to the redemption of a firearm from a pawnshop. The defendant had argued that redeeming a firearm from a pawnshop did not amount to acquiring the firearm because the pawnor already possessed the firearm being redeemed. *Huddleston*, 415 U.S. at 819-20. The Court did not embrace that argument because doing so would mean that “every evil Congress hoped to cure would continue unabated.” *Id.* at 829.

*Barrett v. United States*, 423 U.S. 212 (1976), illustrates the same point. There, the Court considered if the Gun Control Act reached local purchases of firearms that had previously traveled interstate. It did, the Court concluded, because Congress could not have meant to exclude “the most usual transaction” from a law that was meant to broadly keep firearms away from people deemed too irresponsible to possess them. *Id.* at 220-21.

More recently, in *Abramski*, the Court affirmed the importance of interpreting the Gun Control Act consistent with Congress’s purpose. At issue was how the Gun Control Act governs transactions in which the purchaser falsely claims to be purchasing a firearm for himself. The Court rejected an argument that such “straw” purchases are permissible so long as the straw purchaser could have bought the gun for himself, for “[t]he overarching reason” that it “would undermine—indeed, for all important purposes, would virtually repeal—the gun law’s core provisions.” *Abramski*, 573 U.S. at 179-80. Congress’s intent to keep guns away from those who should not have them would be defeated if the Gun Control Act ignored the realities of a transaction; it would be “utterly ineffectual” to perform the statute’s required background check on someone other than the gun’s actually intended owner. *Id.* at 180-81.

On top of hewing to congressional purpose, the Court consistently has taken a pragmatic view of gun transfers and ownership to ensure that the Gun Control Act is not interpreted in a way that produces gaps in the statute’s coverage. Each of *Huddleston*, *Barrett* and *Abramski*

exhibits how the Court has used this concern to inform its reading of the Gun Control Act. In *Huddleston*, when the Court could not locate in the legislative history what Congress meant by “acquisition” or “sale or other disposition,” it interpreted those phrases to give them “maximum coverage.” 415 U.S. at 826-27. In *Barrett*, the Court was unwilling to interpret the Gun Control Act to allow people classified as potentially dangerous or irresponsible under the statute to obtain a firearm through an intrastate transaction because accepting that argument would produce a “gap in the statute’s coverage.” 423 U.S. at 218. Finally, when addressing straw purchases in *Abramski*, the Court gleaned from the Gun Control Act that Congress was concerned “with the practical realities, rather than the legal niceties, of firearms transactions,” meaning the Court should follow a “substance-over-form approach” to interpreting the statute. 573 U.S. at 183-84. Guided by that approach, the Court could not read the Gun Control Act to be ambivalent about the person who would in fact own a purchased firearm. *Id.*

*b. The Proposed Rule Interprets the Gun Control Act Consistently with Congressional Intent*

Applying the lessons of these cases here, the best interpretations of “firearm”; “frame or receiver”; and “readily” must be broad enough to encompass the realities of modern firearms and future design developments. Otherwise, as has become evident, a large class of “firearms” within § 921’s definition completely evades the Gun Control Act’s restrictions. When that happens, the Gun Control Act does not provide Congress’s intended oversight of the manufacture or transfer of firearms and does not restrict individuals deemed ineligible to obtain a gun from doing so.

The Bureau’s proposed rule appropriately interprets these terms, properly clarifying the broad range of firearms Congress intended the Gun Control Act to cover. With weapon parts kits, for example, the Bureau rightly concludes that these are “firearms” within the meaning of § 921(a)(3)(A) because they can be readily converted into a functioning weapon, and are designed to do so. 86 Fed. Reg. at 27,729 & nn. 39-41. There is no merit to any argument that kits are not firearms within § 921 just because they are sold in an incomplete state, an argument that at once ignores the pragmatics of weapon parts kits and the Gun Control Act’s “designed” and “readily” converted language. Indeed, “[e]very circuit to consider the question has come to the same conclusion: an inoperable weapon that ‘will’ not expel a projectile . . . still falls within the statutory definition of a firearm if it is ‘designed’ to do so.” *United States v. Thomas*, No. 17-cr-194 (RDM), 2019 WL 4095569, at \*5 (D.D.C. Aug. 29, 2019). Similarly, the best reading of the text “frame or receiver” in § 921(a)(3)(B) is that the phrase encompasses some unfinished frames and receivers. It is implausible that Congress intended to ignore nearly complete frames and otherwise functional but “incomplete” receivers. At some point before completion, a product becomes sufficiently recognizable as a “frame or receiver” that it falls within the reach of § 921(a)(3)(B). The proposed rule’s definition of what qualifies as a “[p]artially complete, disassembled, or inoperable frame or receiver,” 86 Fed. Reg. at 27,746, sets forth a pragmatic way to resolve that issue.

Factually, there can be no dispute that kits—or partially complete frames or receivers for that matter—are designed to operate as a firearm, and can be readily converted to do so. For each of its kits and partially complete receivers, Polymer80, for example, has manuals for converting the kit into a functioning weapon.<sup>40</sup> Some of Polymer80’s kits are promoted specifically as “contain[ing] all the necessary components to build a complete PF940C pistol.”<sup>41</sup> Another retailer—80% Arms—says about one of its pistol kits that “[t]he complete GST-9 pistol kit is everything you need to build a top-tier handgun . . . . Our goal was for you to be able to go from opening the mail, to a competition or defense ready pistol in under 15 minutes.”<sup>42</sup> The same company says about its partially complete receivers that it is “ridiculously easy for a non-machinist to finish their 80% lower in under 1 hour with no drill press required.”<sup>43</sup>

Likewise, the Bureau’s proposed rule appropriately makes clear that all complete firearms have a frame or receiver, even those designed with a split or modular frame. It provides a comprehensive definition of “frame or receiver” such that manufacturers cannot use the Bureau’s regulations as a guide to avoid federal oversight. The proposed definition further ensures that it will no longer be true that “as many as 90 percent of all firearms now in the United States” do not have a frame or receiver covered under the Gun Control Act, 86 Fed. Reg. at 27,722, and also that the new regulations are not rendered obsolete by future industry developments.

Finally, the proposed rule provides a reasoned and logical definition of “readily” with a set of eight criteria that will determine whether incomplete weapons or configurations of parts are “firearms.” 86 Fed. Reg. 27,730. This definition takes a practical approach to defining when any product that is not yet an operable weapon still comes within the scope of the Gun Control Act. So, for example, the proposed rule sensibly recognizes that excluding one or two firearm components that are easily obtained in an accompanying product or from a separate source does not change the fact that a weapon kit is “designed to or may readily be converted” to an operable weapon. *See, e.g., United States v. Drasen*, 845 F.2d 731, 736-37 (7th Cir. 1988) (rejecting argument that a collection of rifle parts cannot be a “weapon”).

In sum, the Supreme Court has made clear that Congressional purpose should be followed when interpreting where the Gun Control Act applies. The proposed rule does an admirable job reconciling the Bureau’s regulations with the purpose of the Gun Control Act. As the regulations are finalized, the Bureau should continue to be guided by the ultimate goals of the Gun Control Act and the realities of modern firearms.

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<sup>40</sup> <https://www.polymer80.com/how-to-manuals>.

<sup>41</sup> <https://americanweaponscomponents.com/product/polymer80-pf940c-buy-build-shoot-bbs-15-round-magazine>.

<sup>42</sup> <https://www.80percentarms.com/products/gst-9-80-pistol-build-kit/>.

<sup>43</sup> <https://www.80percentarms.com/80-jigs/>.

### 3. Suggestions to Clarify the Final Regulations

We support the proposed rule's major provisions for the reasons discussed above. We also want to provide the Bureau with additional suggestions that we believe will help achieve the Gun Control Act's critical objectives.

First, for "a split or modular frame or receiver," the proposed rule explains that the Director has discretion to determine what qualifies, and identifies the factors that the Director will consider in the exercise of that discretion. 86 Fed. Reg. at 27,743. It thus appears that something may qualify as a "split or modular frame or receiver" only if the Director makes that determination. While we agree it is important both that the Director has discretion to determine what qualifies as a "frame or receiver" and that the proposed rule identifies what factors the Director will consider in the exercise of that discretion, the regulations should also provide a standard that may be generally used to determine whether something is a "a split or modular frame or receiver," and then additional factors that may inform how that standard is applied. Structured that way, the regulations would define "a split or modular frame or receiver" much as the proposed rule suggests defining "readily." 86 Fed. Reg. at 27,747. As one possible solution, we recommend inserting "each of those parts shall be a frame or receiver unless" before "the Director may determine" and then changing "may determine" to "determines." Relatedly, for the definition of "partially complete, disassembled, or inoperable frame or receiver," 86 Fed. Reg. at 27,746, we suggest making clear that courts and the public, in addition to the Director, may rely on the identified considerations to determine whether something is a "partially complete, disassembled, or inoperable frame or receiver."

Second, for the reasons stated above, we strongly support the Bureau's proposal to add to the regulatory definition of "firearm" that it "shall include a weapon parts kit that is designed to or may readily be assembled, completed, converted, or restored to expel a projectile by the action of an explosive." 86 Fed. Reg. at 27,741. We further urge the Bureau to clarify the relationship between a weapon parts kit and a partially complete frame or receiver. Although the proposed rule includes a "weapon parts kit" within the definition of "firearm" and separately defines a "partially complete, disassembled, or inoperable frame or receiver," we note that a partially complete frame is often sold as part of a weapon parts kit. Therefore, we suggest that the Bureau clarify whether, to satisfy the Bureau's definition of "firearm," a weapon parts kit must include a partially complete frame or receiver.

Third, the proposed definition of "frame or receiver" states in part that a "frame or receiver" is "[a] part of a firearm that, *when the complete weapon is assembled*, is visible from the exterior and provides housing or a structure designed to hold or integrate one or more fire control components . . . ." See 86 Fed. Reg. at 27,741 (emphasis added). We believe the current placement of italicized language makes the definition susceptible to being read to say that the part of a weapon that is the "frame or receiver" becomes so only when the complete weapon is assembled. In other words, until assembly there is no "frame or receiver." To avoid that possible

misreading, we believe the sentence should say, “a part of a [complete weapon] that is or will be visible from the exterior when the complete weapon is assembled and provides housing or a structure designed to hold or integrate one or more fire control components . . . .”

Fourth, the proposed definition of “frame or receiver” refers to “[a] part of a *firearm* . . . .” 86 Fed. Reg. at 27,741 (emphasis added). Because under both the Gun Control Act and the Bureau’s regulations a “firearm” could mean just the “frame or receiver” of a weapon, it is confusing to define “frame or receiver” as “a part of a firearm.” “A part of a *complete weapon*” would be a better alternative. Further on in the definition, the Bureau proposes to include that “the term ‘fire control component’ means a component necessary for the *firearm* to initiate, complete, or continue the firing sequence.” 86 Fed. Reg. at 27,741 (emphasis added). Again, given that a “firearm” is defined by statute and regulation to encompass just the frame or receiver of a weapon—which necessarily will not fire—the italicized portion could read “complete weapon.” Similar use of “firearm” occurs once more in the supplemental definition provided for a split or modular frame or receiver, which reads that “in the case of a *firearm* with more than one part that provides housing or a structure designed to hold or integrate one or more fire control or essential internal components . . . .” 86 Fed. Reg. at 27,743 (emphasis added). Here, too, the italicized portion may make more sense if it read “complete weapon.”

Fifth, we believe that the Bureau should explain that “made,” as used in the definition of “privately made firearm,” does not imply that firearms cannot be “manufactured” by private parties for purposes of other firearms laws. The proposed rule opted for “privately made firearm” instead of “privately manufactured firearms” to distinguish between what a federal licensee does (manufacture) and what a non-licensee does (make). 86 Fed. Reg. at 27,730. The preamble then cites definitions of “manufacturer” and “licensed manufacturer” in the Gun Control Act and National Firearms Act, and notes that the latter defines the term “make” to include “manufacturing (other than by one qualified to engage in the business under this chapter). . . .” 86 Fed. Reg. at 27,730 n.60. The National Firearms Act’s definition of “make” demonstrates that the distinction between “make” and “manufacture” is not consistent throughout federal law. We therefore urge the Bureau to clarify that its use of “made” in this regulation does not limit the meaning of either “made” or “manufacture” as used in this and other federal laws and regulations.

Sixth, we urge the Bureau to consider—in this rulemaking or otherwise—how to effectively regulate the domestic distribution of Computer Aided Manufacturing (CAM) and Computer Aided Design (CAD) files and other software and technology used to produce firearms. Digital files used for the production of firearms via 3D printing, just like weapon parts kits, can be used to “readily” assemble a working firearm. CAM or CAD files can produce a firearm frame or receiver or even a complete firearm using a 3D printer with no or minimal human manipulation needed. The Department of Commerce, through its Export Administration Regulations, currently regulates the *export* of CAM or CAD files for the production of firearms where such files are “ready for insertion into a computer numerically controlled machine tool,

additive manufacturing equipment, or any other equipment that makes use of” the files “to produce the firearm frame or receiver or complete firearm.” 15 C.F.R. § 734.7(c). Since Commerce’s regulations apply only to the international distribution of such files, no federal agency currently regulates their domestic distribution. We believe there are opportunities for the Bureau to work alone or with other Departments, such as Commerce, to address this problem.

Seventh, we support the Bureau’s proposed requirements for the marking of privately made firearms—including those produced using additive manufacturing—for traceability purposes. In the final rule, we believe the Bureau should clarify that any identifying marks must be placed on the metal insert of an otherwise undetectable firearm, not on any polymer or other nonmetal part or component, to ensure the marks are not worn away during normal use. While the proposed rule’s preamble suggests this should happen, 86 Fed. Reg. at 27,732, the text of the proposed regulations does not do so explicitly.

#### **4. Conclusion**

We strongly support the Bureau for undertaking this much-needed rulemaking to modernize its regulatory definitions of terms used in the Gun Control Act. The current regulatory definitions’ failure to capture all firearms properly subject to the Gun Control Act has allowed unserialized guns to spread throughout our states, coinciding with a significant rise in gun violence. The Bureau’s revised interpretations of terms used in the Gun Control Act better accomplish that statute’s important purposes and will help address the ongoing wave of gun violence.

Respectfully submitted,



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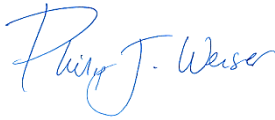
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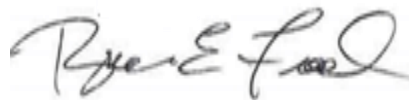
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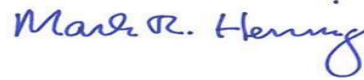


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