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Privately Made Firearms: A Growing Source of Unmarked, Untraceable “Ghost Guns”?

On April 7, 2021, the White House announced that the Department of Justice (DOJ) has been directed to issue a proposed rule to address “ghost guns” within 30 days (by May 7, 2021). For many years, “privately made firearms” did not appear to be a large source of crime guns. In the last decade, however, the commercial availability of parts kits, unfinished firearms frames or receivers, and compact computer numerical control (CNC) milling devices have arguably made building some firearms simpler and less expensive. As privately made firearms have increased in number, it appears that the use of unmarked “ghost guns” in shooting sprees, shootouts with police, and other crimes has also increased. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has expressed concern about its inability to trace such firearms.

“Ghost Guns”

“Ghost guns” is a term used to refer to firearms encountered by law enforcement that are largely untraceable, because they were assembled, legally or illegally, by someone other than a federally licensed manufacturer and, therefore, were not marked with a serial number and other identifying features on their frames or receivers. In the last decade, the increase of crimes committed with privately made, unmarked “ghost guns” suggests that persons prohibited from receiving or possessing firearms have increasingly exploited the general availability of unfinished firearms frames and receivers, or “blanks,” to assemble firearms (which they otherwise may not have been able to purchase lawfully). Others, sometimes with criminal intent, build these firearms so they cannot be traced back to them.

Some people also fear that criminals could use 3D-printers and computer-aided design (CAD) files to produce firearm frames or receivers in large quantities, creating a significant source of illegally trafficked, untraceable firearms. Criminals may also be able to use such technology to produce “undetectable” firearms made of mainly non-metallic parts (plastic/polymer guns), which might pass through metal detectors at security checkpoints undetected.

“Privately Made Firearms” Under the GCA

The Gun Control Act of 1968 (GCA; 18 U.S.C. §§921 et seq.) requires all persons who are engaged in the business of importing, manufacturing, or dealing in firearms to be federally licensed. These licensees are commonly referred to as federal firearms licensees, or FFLs. However, the GCA does not prohibit a person from making a firearm for his or her own personal use. Nor does it require any form of federal licensure to do so, or require that such firearms be marked with a unique serial number and other maker marks, as is the case for all other firearms imported or manufactured by FFLs under the act. Nonetheless, the GCA

sets limits on building a firearm for one’s own use.

Building a privately made firearm is only permissible if the maker is not prohibited from possessing a firearm under federal or state law; the firearm is not regulated under the National Firearms Act of 1934 (e.g., a machine gun or short-barreled shotgun); and the maker does not build it with intent to sell it. Even so, privately made firearms may be lawfully transferred, as long as the unlicensed maker did not build it with the intent to sell it. The GCA does not impose recordkeeping or background check requirements on such transfers, unless they are interstate transfers to other unlicensed persons, in which case those transfers must go through an FFL in the state where the transferee resides.

Firearms Marking and Recordkeeping

Under GCA, firearm importers and manufacturers are required to mark (engrave, cast, or stamp) the frame or receiver of any firearms they import and make with a serial number and other markings (e.g., model, caliber, and importer or manufacturer’s name, city, state) (18 U.S.C. §923(i) and 27 C.F.R. §478.92). It is a felony for any person to transport, ship, or receive in interstate or foreign commerce, any firearm that has had its serial number removed, obliterated, or altered (18 U.S.C. §922(k)).

All FFLs, moreover, are required to maintain records on firearms transactions for at least 20 years and make those records available to ATF under certain circumstances. When an FFL goes out of business, he or she must submit those records to ATF, but those records may only be searched by make, model, and serial number of a firearm, as statutory provisions prohibit a national registry of firearms or owners. By querying these records, ATF can sometimes trace the firearm’s chain of commerce from importer/manufacture to wholesaler/distributor and, from there, to the retailer, and to the first unlicensed, private purchaser of record. Through this process, ATF can sometimes establish at what point a firearm was diverted from legal to illegal channels of commerce, and identify persons engaged in illegal gun trafficking and other crimes.

Undetectable Firearms

The GCA prohibits the manufacture, importation, transfer, or possession of any firearm that is not detectable to walk-through metal detectors calibrated to detect a security exemplar that resembles a handgun with the same electromagnetic signature as 3.7 ounces of stainless steel. It is notable that nothing in this provision requires that signature be made from an operable part of the firearm. The act also prohibits firearms that include major components (barrels, slides, cylinders, frames, or receivers) that do not generate an accurate image when inspected with x-ray machines commonly used at airports (18 U.S.C. §922(p)).

Firearm Frame or Receiver

Under the GCA, the term “firearm” means “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.” This multi-faceted definition also includes the “frame or receiver” of any such weapon (18 U.S.C. §921(a)(3)). A firearm frame or receiver is “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” (27 C.F.R. §478.11). A “receiver” is the central part of a rifle or pistol to which the barrel and shoulder stock/grip(s) are attached. In pistols, revolvers, and break-open firearms, this central part of a firearm is generally called a “frame.” The “receiver” or “frame” is generally the “controlled part” of a firearm. Transfers of fully manufactured, finished firearm frames or receivers are treated under the GCA in the same way as a fully assembled firearm. Hence, a person must be an FFL to import, manufacture, or deal in completed firearm frames or receivers. FFLs may not sell finished frames or receivers to anyone under 21 years of age, and unlicensed purchasers of these items from FFLs are subject to a GCA-required background check (18 U.S.C. §922(t)).

Unfinished Frames or Receivers

A federal license, however, is not required to manufacture or distribute incomplete, unfinished frames or receivers if ATF has determined that these objects—in an unfinished state of manufacture—do not meet the statutory definition of a firearm. To finish them, one must drill out certain holes and hollow (mill) out the fire control cavity. These unfinished objects are commonly referred to as “80% frames and receivers,” but that descriptor does not reflect any prescribed dimensions under federal law, and related ATF determinations are made largely on a case-by-case basis. Similarly, a federal license is not required to manufacture or distribute other components necessary to build fully operable firearms, such as barrels, trigger or bolt assemblies, magazines, grips, shrouds, muzzle brakes/flash suppressors, or any other firearm parts and accessories.

While unfinished steel frames for pistols and revolvers have been available for decades, these items usually required additional finishing that required hobbyists to obtain the services of a gunsmith or machinist. The popularity of building a firearm from parts kits and unfinished frames and receivers increased after 1989, when the Bush Administration imposed import restrictions on certain semiautomatic “military style” rifles and shotguns that were made statutory in 1990 (18 U.S.C. §922(r)). In part, FFLs responded to these restrictions by importing parts kits for firearms like the AK-47. Licensed manufacturers and unlicensed, private persons then used those kits to build firearms, though they were required to use a requisite number of U.S.-made parts to fully assemble these firearms. Other commercial producers provided unfinished receivers, or “flats,” that could be stamped or bent by pre-marked folds, and drilled out by pre-marked holes, into a finished product. Parts kits and unfinished receivers, “castings,” for AR-15-type firearms and many other firearms became commercially available to the point they are commonplace on the U.S. civilian firearms market. In the past decade, jigs and templates have become available that make finishing

these aluminum or polymer castings much simpler. Instructional how-to videos are widely available on the internet. Today, individuals with a modicum of mechanical ability can finish an aluminum or polymer frame or receiver without a great deal of difficulty and, then, assemble a fully operable firearm with aftermarket firearm parts.

Ghost Guns and High-Profile California Shootings

While “ghost guns” are not a problem exclusive to California, the issue rose to national prominence after several high-profile mass shootings in that state. On June 7, 2013, an assailant went on a mass shooting spree in Santa Monica, CA, with an unmarked, semiautomatic AR-type semiautomatic rifle. On November 13-14, 2017, an assailant, who was already under a domestic violence restraining order, went on a mass shooting spree in Tehama County, CA, with a self-assembled, unmarked AR-type rifle. On November 14, 2019, a 16-year-old student shot several other students at Saugus High School, in Santa Clarita, CA, with an unmarked, semiautomatic pistol. In the cases described above, all of the assailants were either prohibited persons or underage; that is, they were ineligible to receive or possess a firearm or ammunition under federal law. In 2016, the California Legislature passed a law requiring persons who assemble a rifle or shotgun for their own use to acquire a unique serial number from the California Department of Justice. Privately made handguns are prohibited under California law.

Southwest Border Gun Trafficking

In 2016, the Government Accountability Office (GAO) reported that unfinished frames and receivers, as well as other firearms parts (barrels, triggers, hammers, buttstocks, pistol grips, pins, bolts, and springs), were complicating law enforcement efforts intended to prevent firearms from being unlawfully trafficked into Mexico. Arguably, a similar dynamic is playing out domestically on U.S. streets according to U.S. Attorney and ATF press releases. There are also numerous press accounts of metropolitan police departments, including the District of Columbia, that report significant increases in the numbers of “ghost guns” being recovered by police.

FY2021 House Appropriations Language

Currently, there are no definitive data on “ghost guns” as an emerging national crime/public safety problem. In the 116th Congress, the House Committee on Appropriations reported its Commerce, Justice, Science, and Related Agencies Appropriations Act, 2021 (H.R. 7667) with accompanying report language (H.Rept. 116-455, p. 81) that would have urged ATF to amend its definition of “firearm frame or receiver” under 27 C.F.R. §478.11 to ensure that privately manufactured firearms fall more fully under federal firearms regulations. Report language also directed ATF to provide the committee with all available data on the rate that federal authorities encounter ghost guns, and recommendations to improve such data collection. This report language, however, was not adopted as part of the Consolidated Appropriations Act, 2021 (P.L. 116-260).

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