

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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August 10, 2021

Mr. Marvin Richardson
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue N.E.
Washington, DC 20226

Dear Acting Director Richardson:

The Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) attempt to expand the definition of firearm, like other ATF regulatory efforts, is deeply flawed, beyond the scope of ATF's authority, contrary to years of previous ATF opinions, and harmful to millions of law-abiding American firearm owners. We therefore request information about the Biden Administration's flagrant effort to restrict Americans' fundamental Second Amendment rights.

On May 21, 2021, ATF published a notice in the *Federal Register* entitled, "Definition of 'Frame or Receiver' and Identification of Firearms."¹ The proposed rule would expand the definitions of several terms associated with firearms because the current regulations allegedly fail to capture the full meaning of those terms. The rule would also impose more marking and recordkeeping requirements necessary to implement the new definitions.²

ATF's proposed rule goes well beyond the authority granted to the agency in any applicable federal statutes. The proposed rule would expand the definition of "frame or receiver" to include any part of a firearm that can house even one mechanism of the firing process.³ ATF concedes that its "new definition would more broadly define the term 'frame or receiver' than the current definition."⁴ Moreover, ATF expands the definition of a firearm beyond the intent of Congress in the proposed rule. The ATF includes "a *weapon parts kit* that is designed to or may readily be *assembled, completed, converted, or restored*."⁵ However, the GCA defines a firearm 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...⁶

¹ Alcohol, Tobacco, Firearms, and Explosives Bureau, Definition of "Frame or Receiver" and Identification of Firearms, 86 Fed. Reg. 27,720 (May 21, 2021).

² Definition of "Frame or Receiver" and Identification of Firearms, *supra* note 1 at 27,727.

³ Definition of "Frame or Receiver" and Identification of Firearms, *supra* note 1 at 27,727.

⁴ Definition of "Frame or Receiver" and Identification of Firearms, *supra* note 1 at 27,727.

⁵ Definition of "Frame or Receiver" and Identification of Firearms, *supra* note 1 at 27,741 (emphasis added).

⁶ 18 U.S.C. §921(a)(3).

When passing the GCA, Congress did not include “weapon parts kit[s]” and the ATF took it upon itself to include *assembled* and *completed* where Congress explicitly left those actions out of the governing statute. In fact, ATF seeks to unilaterally insert a new definition using language from the Federal Firearms Act (FFA) of 1938,⁷ which Congress affirmatively repealed in the Gun Control Act of 1968 (GCA).⁸ ATF attempts to resurrect the FFA’s language through its new regulatory definition of “the frame or receiver” so that a single weapon might be comprised of multiple “frames” and “receivers.”⁹ Any of these “parts” in ATF’s interpretation would be considered a firearm so long as the Director decreed any “specific part or parts of a weapon is the frame or receiver.”¹⁰ By doing so, ATF disregards its controlling statutory language in the GCA and ignores Congress’s clear legislative intent in repealing the FFA.

Moreover, ATF’s proposed regulation creates a new definition to regulate privately made firearms without any statutory authorization from Congress to do so. ATF erroneously asserts that the GCA “required all firearms to be serialized,”¹¹ and that to do so, ATF must require federal firearms licensees to serialize and record any privately made firearms they come across. This new mandate would greatly expand the statutory requirement that only “manufacturers” and “importers” must mark guns they manufacture or import.¹² To enforce the serialization, ATF seeks to create a new federal crime of obliterating the serial number on a privately made firearm and establish a new category of “dealer-gunsmith” who must mark and record privately made firearms.¹³

ATF’s rule appears to be a deliberate attempt to usurp the authority of Congress. In so doing, ATF has also unconstitutionally infringed on American citizens’ fundamental Second Amendment rights and privacy rights under the Fourth Amendment. We strongly urge ATF to abandon its proposed rule issued on May 21, 2021, entitled, “Definition of ‘Frame or Receiver’ and Identification of Firearms.” In addition, to better understand ATF’s reasons for issuing the proposed rule, we request that you provide the following information:

1. Please explain when ATF first began to conceive of the need to broaden the definition of “frame or receiver” and the identification of firearms through an agency notice.
2. Please explain why ATF believes it is “necessary to trace all firearms” and how “tracing all firearms” is consistent with the Gun Control Act of 1968 and the National Firearms Act.
3. Please identify the offices within ATF that conceived, drafted, reviewed, and approved the May 21, 2021 notice.

⁷ Pub. L. 75–785.

⁸ Pub. L. 90-618.

⁹ Definition of “Frame or Receiver” and Identification of Firearms, *supra* note 1 at 27,722.

¹⁰ Definition of “Frame or Receiver” and Identification of Firearms, *supra* note 1 at 27,743.

¹¹ See 18 U.S.C. §923(i); 27 C.F.R. §478.92(a)(1).

¹² Definition of “Frame or Receiver” and Identification of Firearms, *supra* note 1 at 27,732.

¹³ Definition of “Frame or Receiver” and Identification of Firearms, *supra* note 1 at 27,731-32. ATF claims in the body of the proposed regulation that “this proposed provision is necessary to allow ATF to trace all firearms”

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4. Please explain whether the Justice Department reviewed and approved ATF's May 21, 2021 notice, including the entities involved in the review and the timing of the review.
5. Please explain whether the Office of Management and Budget reviewed and approved ATF's May 21, 2021 notice, including the entities involved in the review and the timing of the review.

We ask that you provide this information as soon as possible but no later than 5:00 p.m. on August 17, 2021.

The House Committee on the Judiciary has jurisdiction over criminal law and federal administrative procedure pursuant to House Rule X. If you have any questions about these requests, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,



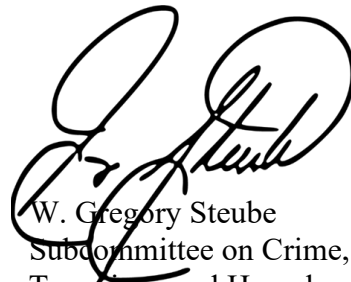
Andy Biggs
Ranking Member
Subcommittee on Crime,
Terrorism and Homeland Security



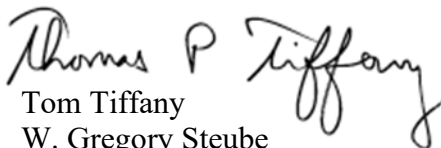
Jim Jordan
Ranking Member




Louie Gohmert
Subcommittee on Crime,
Terrorism, and Homeland Security



W. Gregory Steube
Subcommittee on Crime,
Terrorism, and Homeland Security



Tom Tiffany
W. Gregory Steube
Subcommittee on Crime,
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Victoria Spartz
Subcommittee on Crime,
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Scott Fitzgerald
Subcommittee on Crime,
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Burgess Owens
Subcommittee on Crime,
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