



Definition of Frame or Receiver and Identification of Firearms

27 CFR Parts 447, 478, and 479

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Notice of Proposed Rulemaking

***Preliminary Regulatory Analysis and Initial Regulatory Flexibility
Analysis***

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Abbreviations

ATF	Bureau of Alcohol, Tobacco, Firearms, and Explosives
BLS	Bureau of Labor Statistics
CFR	Code of Federal Regulations
FATD	Firearms Ammunitions Technology Division
FFL	Federal Firearms License
IRFA	Initial Regulatory Flexibility Analysis
NAICS	North American Industry Classification System
NPRM	Notice of Proposed Rulemaking
OMB	Office of Management and Budget
PMF	Privately Made Firearm
RFA	Regulatory Flexibility Act
§	Section symbol
SBA	Small Business Administration
SME	Subject Matter Experts
U.S.	United States
U.S.C.	United States Code

Executive Summary

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic benefits, environmental benefits, public health and safety effects, distributive impacts, and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Attorney General has determined that while this proposed rule is not economically significant, it is a “significant regulatory action” under section 3(f)(4) of Executive Order 12866 because this proposed rule raises novel legal or policy issues arising out of legal mandates. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget (OMB).

This preliminary Regulatory Analysis (RA) provides supporting documentation for the regulatory evaluation in the preamble of the notice of proposed rulemaking (NPRM) for the Definition of Frame or Receiver and Identification of Firearms [2021R-05]. We did not attempt to replicate precisely the regulatory language of the NPRM in this analysis; the regulatory text of an effective rule, not the text of this analysis, would be legally binding.

Table ES.1 Summary of Affected Population, Costs, and Benefits

Category	NPRM
Applicability	• New Definition of Receiver • Update Marking Requirements • New Gunsmithing Definition • Update Record Retention • Other Technical Amendments
Affected Population	• 113,204 FFLs (Record Retention)

	• Unknown number of FFLs manufacturers and importers (Definition of Frame or Receiver) • 35 Non-FFL manufacturers (Definition of Frame or Receiver) • 6,044 FFL retailers (PMFs) • 36 Non-FFL retailers (PMFs) • Unknown number of Individual Owners
Total Costs to Industry, Public, and Government (7% Discount Rate)	\$1.0 million; \$147,048 7% annualized
Benefits (7% Discount Rate)	N/A
Benefits (Qualitative)	• Provides clarity to courts on what constitutes a firearm frame or receiver • Applies to new technology • Makes consistent marking requirements • Eases certain marking requirements • Increase tracing of crime scene firearms to prosecute criminals

ES-1 New Definition of Firearm “Frame or Receiver”

The proposed definition of this term will maintain current classifications and current marking requirements of firearm frames or receivers, except that the licensed manufacturer or importer must mark on new designs or configurations either: their name (or recognized abbreviation), and city and State (or recognized abbreviation) where they maintain their place of business; or their name (or recognized abbreviation) and their abbreviated FFL number, on each part defined as a frame or receiver, along with the serial number. To ensure traceability if the parts are separated, there would no longer be an option *only* to mark the FFL’s name, city, and state on the slide or barrel. More specifically—

- The new definition takes into account the fact that modern firearms do not house all the components as defined in the current definition. The new definitions account for firearms such as split frames or multi-piece firearms;

- The new definitions currently recognize the current classifications of a firearm “frame or receiver.” It is intended to encompass the majority, if not all, existing regulated firearms, and no new marking requirements would be required for these existing designs and configurations;
- Markings on new designs or configurations of firearms manufactured or imported after the proposed rule is finalized may be accomplished by marking each frame or receiver with the licensee’s name, city, and state, and serial number, or with the licensee’s name and abbreviated license number prefix and number (serial number) in the manner prescribed by existing marking requirements; and
- Markings must be accomplished within 7 days of completion of the active manufacturing process for the complete weapon (or frame or receiver of such weapon if not being sold as a complete weapon). This reasonable time limit is well known to the firearms industry and was derived from the recordkeeping requirements for manufacturers who must record their firearms manufactured within seven days from completion. Without markings, firearms cannot be properly recorded into inventory. This rule will supersede ATF Ruling 2012-1, Time Period to Identify Firearms Manufactured.

The majority of the industry currently comply with these requirements, so the cost is minimal. While the new definitions would mostly affect new designs or configurations of firearms, manufacturers are still able to receive a determination or a variance on the design and configuration from ATF; therefore, they may not experience an additional cost or burden. For more details, please refer to Chapter 2.

ES-2 Manufacture of Partially Complete Firearm kits

This section addresses non-FFL manufacturers who manufacture partially complete, disassembled, or inoperable frame or receiver kits, to include both firearm parts kits that allow a person to make only a frame or receiver, and those kits that allow a person to make a complete weapon. When a partially complete frame or receiver parts kit reaches a stage in manufacture where it may readily be completed, assembled, converted, or restored to a functional state, it would be considered a firearm “frame or receiver” that must be marked. Further, under the proposed rule, weapon parts kits with partially complete frames or receivers containing the necessary parts such that they may readily be completed, assembled, converted, or restored to expel a projectile by the action of an explosive are “firearms” for which each frame or receiver of the weapon, as defined under this rule, must be marked.

For non-FFL manufacturers of firearm parts kits containing a part defined as a firearm frame or receiver, ATF anticipates there would be a significant impact on these companies but note that the overall industry impact would also be minimal. ATF anticipates that these non-FFLs would either become FFLs to sell regulated frames or receivers or complete weapons, or would take a loss in revenue to sell unregulated items or parts kits that do not contain a frame or receiver (*i.e.*, unregulated raw materials or molds, components, accessories, tools, jigs, or instructions), but not both. For more details, please refer to Chapter 3.

ES-3 Gunsmithing

The proposed rule would result in a one-time cost for contract gunsmithing, estimated to be \$180,849. For more details, please refer to Chapter 4.

ES-4 Silencers

The proposed rule would require silencers to be marked on any housing or structure, such as an outer tube or modular piece, designed to hold or integrate one or more essential internal components of the device. Currently, the regulations assume that each part defined as a muffler or silencer must be marked and registered.¹ While this proposed change would increase the number of certain parts—firearm muffler or silencer frames or receivers—that need to be marked for modular silencers, this proposed change is not intended to require marking of all silencer parts so long as they are incorporated into a complete device by the original manufacturer or maker that is marked and registered. More specifically, none of the internal nonstructural parts of a complete muffler or silencer device would need to be marked so long as each frame or receiver as defined in this rule is marked. However, as with current regulations, silencer parts sold, shipped, or otherwise disposed of separately are still considered “silencers” that require all markings prior to disposition except when transferred between qualified manufacturers for the production of new devices, and to qualified manufacturers and dealers for the repair of existing devices.

However, the proposed rule would require some manufacturers of silencers to mark the outer tube rather than the endcap. ATF anticipates only minimal costs associated with moving the serial number from the end cap or adding the same serial number to the outer tube on certain silencers. To clarify, manufacturers may continue to mark the end cap voluntarily, but would need to ensure that the serial number is also marked on the outer tube. ATF anticipates that

¹ A firearm “muffler or silencer” is defined to include “any combination of parts” designed and intended for the use in assembling or fabricating a firearm silencer or muffler and “any part intended only for use in such assembly or fabrication.” 18 U.S.C. 921(a)(24); 26 U.S.C. 5845(a)(7); 27 CFR 478.11; *id.* at 479.11. The proposed rule defines the term “complete muffler or silencer device” not to say that individual silencer parts are not considered a firearm “muffler or silencer” subject to the requirements of the NFA, but to advise industry members when those individual silencer parts must be marked and registered in the NFRTR when they are used in assembling or fabricating a muffler or silencer device.

manufacturers would be able to use their existing equipment to mark the same identifying information on the outer tube. No additional materials or equipment would be needed.

Furthermore, there may be a savings for individual owners of silencers. This proposed rule would expressly allow for repairs on silencer devices without having to additionally undergo the NFA transfer and registration process, so long as the device is returned to the sender. For more details, please refer to Chapter 5.

ES-5 Privately Made Firearms

A firearm, including a frame or receiver, assembled or otherwise produced by a non-licensee without any markings by a licensee at the time of production or importation is defined as a “privately made firearm (PMF)” in the proposed rule. This does not include a firearm identified and registered in the NFRTR pursuant to chapter 53, title 26, United States Code, or any firearm made before October 22, 1968 (unless remanufactured after that date). Under the proposed rule, FFLs must mark PMFs within 7 days of the firearm being received by a licensee, or before disposition, whichever first occurs. Licensees would have 60 days after the date of the final rule’s publication or before disposition, whichever first occurs, to mark PMFs already in inventory.

FFLs have the option to mark their existing PMFs themselves. Both FFLs and non-FFLs have the option to contract with an FFL, such as a gunsmith, for this purpose, dispose of them, or send them to ATF or another law enforcement agency for disposal. The industry cost for this section is \$516,893. For more details, please refer to Chapter 7.

ES-6 Record Retention

Currently, licensees other than manufacturers and importers do not have to store their ATF Forms 4473 or A&D records beyond 20 years. This proposed rule would require licensed

dealers and collectors to store their Forms 4473 or A&D records indefinitely. The industry cost for this section is minimal because FFLs could drop off their overflow records to ATF or have ATF ship them directly. The government cost for this provision is \$68,939 annually. For more details, please refer to Chapter 4.

ES-7 ATF Form Updates

This proposed rule would modify existing forms and records, such as ATF Forms 4473, NFA forms, importation forms, the Stolen or Lost Firearms Reports, and A&D Records, to help ensure that if more than one manufacturer or serial number is identified on any firearm, those names or serial numbers are recorded. FFLs would continue to be able to use existing forms until they run out provided they record all information marked on the firearm(s) on their existing forms. As paper forms run out, FFLs would be able to order forms as part of their normal operations. In other words, FFLs using paper forms requested from ATF are not anticipated to incur any additional cost. For FFLs maintaining transaction records electronically, these FFLs would also only be required to update their software during their next regularly scheduled update. Because software updates occur regularly, and costs are already incorporated for those, ATF does not anticipate any additional costs would be incurred for these changes. There is no cost associated with this section. For more details, please refer to Chapter 8.

ES-8 Total cost of the proposed rule

The total 10-year undiscounted cost of this proposed rule would be \$1.3 million. The total 10-year discounted cost of the rule is \$1.0 million and \$1.2 million at 7 percent and 3 percent respectively. The annualized cost of this proposed rule would be \$147,048 and \$135,750, also at 7 percent and 3 percent respectively.

ES-9 Alternatives

This section outlines the various alternatives considered when creating this proposed rule. For a more detailed analysis, please refer to Chapters 1 and 10.

Proposed Alternative— Promulgating new definitions of “frame or receiver,” “privately made firearm,” and “gunsmithing,” and an update to records retention and new requirements for marking silencers were chosen as an alternative because they maximize benefits.

Alternative 1—No change alternative. While this alternative minimizes cost, it does not meet any of the objectives outlined in this proposed rule.

Alternative 2— Everytown petition. A petition for rulemaking from Everytown for Gun Safety was received proposing to define “firearm frame or receiver” in 27 CFR 478.11. This proposed definition focuses on housing the “trigger group”; however, it does not define “trigger group” and even it did, would not address firearms that do not house trigger components within a single housing, or which have a remote trigger outside the weapon. In other words, this alternative would fall short of addressing all technologies or designs of firearms that are currently available or may become available in the future. It also does not address potential changes in firearms terminology. Thus, while the alternative requested by this petition would reduce the cost by reducing the number of entities affected, it does not fully address the objectives of this proposed rule.

Alternative 3—Grandfather all existing firearms including frames or receivers. This alternative would grandfather all existing firearms that would not meet the serialization standard for partially complete and split frames or receivers. This was considered and incorporated into the proposed alternative, where feasible. However, in order to enforce the regulation, a complete grandfathering of existing firearms and silencers is problematic in that manufacturers might

illegally continue to produce non-compliant firearm frames or receivers and falsely market them as if they were grandfathered firearms that had been already produced prior to the publication of the final rule. This could potentially pose an enforcement issue that may not be resolved for years if not decades.

Alternative 4—Require serialization of all partially complete firearms or split receivers. This would require all firearms purchased by individuals to be retroactively serialized. However, the cost would increase considerably and the GCA only regulates the manufacture of firearms by Federal firearm licensees, not the making of firearms for personal use by private unlicensed individuals.²

ES-9 Initial Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), we have prepared an Initial Regulatory Flexibility Analysis (IRFA) that examines the impacts of the proposed rule on small entities (5 U.S.C. 601 *et seq.*). The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 people.

Because this proposed rule affects different populations in different ways, the analysis for the Initial Regulatory Flexibility Act has been broken up by provision. Certain provisions may have a significant impact on certain small entities, such as non-FFL manufacturers of firearm parts kits with incomplete firearm frames or receivers. Based on the information from this analysis:

² This alternative would primarily affect PMFs currently in circulation. Because many of these items are unregulated and will continue to be unregulated, it is difficult to reasonably estimate how much this alternative would cost. ATF does not know how many PMFs are currently in circulation. However, ATF believes that costs would increase considerably under this option because most individuals would not be able to mark their PMFs themselves; they would need to take their PMFs to a gunsmith and have them marked in accordance with the regulations.

- ATF estimates that this proposed rule could potentially affect 132,023 entities, including all FFLs and non-FFL manufacturers and retailers of firearm parts kits with incomplete firearm frames or receivers, but anticipates that the majority of entities affected by this proposed rule would experience minimal or no additional costs.
- Non-FFL manufacturers are anticipated to be small and the proposed rule would potentially have a significant impact on their individual revenue.
- The second largest impact would be \$12,828 if a manufacturer had to retool their existing production equipment, but ATF anticipates this is unlikely because this proposed rule encompasses the majority of existing technology. This would not affect future production because this work would be part of their normal operations in creating new firearms.
- ATF estimates the majority of affected entities are small entities that would experience a range of costs; therefore, this rule may have a significant impact on small entities.

ES-10 Paperwork Reduction Act

Under the Paperwork Reduction Act, a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This proposed rule would modify two existing collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the change in annual burden follow in Chapter 12.

1. Introduction

This analysis provides an assessment of the impacts to industry and government from proposed changes detailed in the New Definition of Receiver NPRM. We did not attempt to replicate precisely the regulatory language of the proposed rule in this RIA; the regulatory text, not the text of this analysis, would be legally binding.

This proposed rule would implement the following:

- Provide new definitions of “frame or receiver” and “privately made firearms” that would encompass technological advances in the industry;
- Make consistent marking requirements for firearms including silencers;
- Add partially complete firearm parts kits containing parts readily converted to be a “frame or receiver,” or a complete weapon, to the definitions of “firearm” and “frame or receiver”;
- Extend recordkeeping retention requirements from 20 years to indefinitely;
- Allow for electronic storage of transaction records in lieu of paper records;
- Expand the definition of gunsmithing to include marking by Type 1 and Type 2 Federal Firearms Licensees (FFLs); and
- Make technical amendments allowing for the recording of multiple manufacturers and serial numbers involved with PMFs.

1.1 Statutory Authority

The Attorney General is responsible for enforcing the GCA, as amended, and the NFA, as amended. This responsibility includes the authority to promulgate regulations necessary to enforce the provisions of the GCA and NFA. *See* 18 U.S.C. 926(a); 26 U.S.C. 7801(a)(2)(A); *id.* at 7805(a). Congress and the Attorney General have delegated the responsibility for

administering and enforcing the GCA and NFA to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. *See* 28 U.S.C. 599A(b)(1); 28 CFR 0.130(a)(1)–(2). Accordingly, the Department and ATF have promulgated regulations implementing both the GCA and the NFA. *See* 27 CFR parts 478, 479.

The proposed rule provides new regulatory definitions of “firearm frame or receiver” and “frame or receiver” because they are outdated. The proposed rule would also amend ATF’s definitions of “firearm” and “gunsmith” to clarify the meaning of those terms, and to add new regulatory terms such as “complete weapon,” “complete firearm muffler or firearm silencer device,” “privately made firearm,” and “readily” for purposes of clarity given advancements in firearms technology. Further, the proposed rule would amend ATF’s regulations on marking and recordkeeping that are necessary to implement these new or amended definitions.

1.2 Need for Federal Regulatory Action

One of the reasons ATF is considering this proposed regulation is the failure of the market to compensate for negative externalities caused by commercial activity. A negative externality can be the by-product of a transaction between two parties that is not accounted for in the transaction. This rule addresses a negative externality associated with new technological advances in firearms that impose costs on investigating and prosecuting firearm related criminal cases. In some recent court cases, the courts have rejected ATF’s interpretation of its regulation and strictly construed the current definition, creating the possibility that future courts may hold that the majority of regulated firearm frames or receivers do not meet the existing definition. Furthermore, administrative inspections and criminal investigations and prosecutions are hindered when untraceable firearms (*i.e.*, PMFs) are accepted into and disposed from a licensee’s inventory and when records are destroyed after 20 years despite the fact that firearms may last

longer than 20 years and be used in criminal activities. This proposed rule would update the existing definition of frame or receiver to account for technological advances in the industry and ensure that these firearms continue to remain under the regulatory regime as intended by the enactment of the GCA, including accounting for manufacturing of firearms using multiple manufacturers as well as PMFs.

The narrow interpretation of what constitutes a frame or receiver some courts have espoused would also allow persons to avoid: (a) obtaining a license to engage in the business of manufacturing or importing upper or lower frames or receivers; (b) identifying upper or lower frames or receivers with a serial number and other traceable markings; (c) maintaining records of upper or lower frames or receivers produced or imported through which they can be traced; and (d) running National Instant Criminal Background Check System (“NICS”) checks on potential transferees to determine if they are legally prohibited from receiving or possessing firearms when they acquire upper or lower frames or receivers. In turn, this would allow prohibited persons to acquire upper and lower receivers that can quickly be assembled into semiautomatic weapons more easily and without a background check.³ If no portion of split/multi-piece frames or receivers were subject to any existing regulations, such as marking, recordkeeping, or background checks, law enforcement’s ability to trace semiautomatic firearms later used in crime would be severely impeded.

This proposed rule would also make consistent marking requirements to facilitate tracking in the event the firearm is used in criminal activities. And, in order to accommodate additional marking requirements, this proposed rule expands the definition of gunsmithing.

³ See *Design of AR-15 could derail charges tied to popular rifle*, AP News (Jan. 13, 2020), <https://apnews.com/article/396bbdbf4963a28bda99e7793ee6366>.

This proposed rule would also expand the recordkeeping retention requirement for firearms transactions to indefinite, but also allow for advances in technology in performing transactions such as electronic storage. For more specific details regarding the need for regulation, please refer to the specific chapters pertaining to each provision of this proposed rule.

1.2 Alternatives Considered

This proposed rule—Promulgate new definitions of “firearm frame or receiver” and “privately made firearm”, and update existing serialization requirements, make marking requirements consistent, promulgate new marking requirements for silencers, expand gunsmithing eligibilities, and expand record retention to indefinite. This alternative has higher costs, but where feasible, current determinations and procedures are allowed to be used to minimize costs to industry. This alternative was chosen because it maximizes benefits.

Other Alternatives Considered

Alternative 1— No change alternative. Individuals request that there be no change made. This alternative has no costs or benefits because it is maintaining the existing status quo. This alternative was considered and not implemented because the GCA requires that firearms be regulated. Currently, many of the firearms in existence may fall outside the scope of regulation and a subset of these are purchased by prohibited persons and used in criminal activity. Because of this, this alternative was not chosen.

Alternative 2—Everytown petition. A petition for rulemaking from Everytown for Gun Safety, a nonprofit organization, was received proposing to define “firearm frame or receiver” in 27 CFR 478.11. This proposed definition focuses on housing the “trigger group”; however, it does not define “trigger group” and even it did, would not address firearms that do not house trigger components within a single housing, or which have a remote trigger outside the weapon.

In other words, this alternative would fall short of addressing all technologies or designs of firearms that are currently available or may become available in the future. It also does not address potential changes in firearms terminology. Thus, while the alternative requested by this petition would reduce the cost by reducing the number of entities affected, it does not fully address the objectives of this proposed rule.

ATF considered and declined this alternative, because while it would reduce the cost of this rulemaking, it would not cover all the different types of firearms currently available, or those that may be manufactured in the future using different designs or terminology.

Alternative 3—Grandfather all existing firearms and receivers. This alternative would grandfather all existing firearms that would not meet the serialization standard for partially complete and split frames or receivers. This was considered and incorporated into the proposed alternative, where feasible. However, in order to enforce the regulation, a complete grandfathering of existing firearms and silencers is problematic in that manufacturers could continue to produce non-compliant firearm frames or receivers and falsely market them as grandfathered firearms. This could potentially pose an enforcement issue that may not be resolved for years if not decades.

Alternative 4—Require serialization of all partially complete firearms, split receivers, PMFs, and modular silencers. This would require all firearms purchased by individuals to be retroactively serialized. This would benefit individuals whose firearms are stolen. It would make it easier for owners to either retrieve stolen firearms or have them considered lost property for insurance purposes. However, the cost would increase considerably and the GCA only regulates the manufacture of firearms by Federal firearm licensees, not the making of firearms for personal use by private unlicensed individuals. Therefore, this alternative was not chosen.

2. New Definition of Firearm Frame or Receiver

This proposed rule creates new definitions of firearm “frame or receiver.” It updates how firearm frames or receivers are defined, incorporating various configurations, such as split or modular receivers, as well as partially complete firearm parts kits with incomplete firearm frames or receivers. The proposed definition of this term will maintain current classifications and current marking requirements of firearm frames or receivers, except that the name, city, and state, or alternatively, the name and abbreviated license number of the manufacturer or importer must be marked on the frame or receiver along with the serial number. Recently, some courts have rejected ATF’s interpretation of its regulations and more narrowly construed the definition of firearm frame or receiver. This narrower construction of ATF’s regulations would leave a large percentage of all firearms now in existence without an identifiable firearm frame or receiver.

All new or unclassified firearm frames or receivers would be required to be marked according to the proposed rule, including marking more than one part of a firearm if it meets the definition of firearm frame or receiver. Markings on new and different designs or configurations of firearms manufactured, made, or imported after the proposed rule is finalized may be marked with a serial number and the new additional identifying markings. Marking must be done within 7 days of the weapon being completed (or firearm frame or receiver if not being sold as a complete firearm).

2.1 Need for Definition of Firearm Frame or Receiver

Currently, ATF’s definition of firearm frame or receiver is outdated and does not encompass advances in technology. As it exists, the current definition of firearm frame or receiver does not reflect the majority of firearms that are commercially available. While the

majority of firearms manufacturers have been asking ATF for guidance as to which piece of a newly developed firearm would be defined as a receiver, these ATF designations of a receiver for FFL manufacturers receiving a variance may not be compliant with existing definitions. Furthermore, in a few recent cases, courts determined that certain firearm parts determined to be firearm frames or receivers by ATF do not meet the current regulatory definition of firearm frame or receiver.

ATF's definition of a firearm frame or receiver has not been updated in decades and thus it does not expressly reflect innovations made by the industry. While the majority of Federal firearms licensees who manufacture or import firearms (Type 7 and Type 8 FFLs) request determinations from the Firearms Ammunitions Technology Division (FATD) as to which part of their firearm is a receiver, these determinations have largely been divorced from the express language and scope of the existing regulation.

2.2 Population for Definition of Firearm Frame or Receiver

This affects Type 7 FFLs that manufacture or sell firearms with split or modular receivers. Based on ATF's database, there are 14,831 Type 7 FFLs that could potentially be affected by this proposed rule. This would not affect FFLs that import firearms (Type 8 FFL) because they currently need a determination in order to be able to import firearms.

2.3 Costs for Definition of Firearm Frame or Receiver

For Type 7 FFLs that do not comply with the proposed marking requirements, they would need to reconfigure their marking process and tools in order to comply. Subject matter experts (SMEs) estimate that this would take place in-house and would require approximately

200 hours from a mechanical engineer at a loaded wage rate of \$64.14.^{4,5,6} Should a Type 7 FFL require a revision of their production, ATF estimates that the FFL would experience a one-time cost of \$12,828 to revise production.

However, for the purposes of this analysis, ATF anticipates that few, if any, FFLs would experience this cost. Based on SMEs, the majority of FFLs have historically submitted a request for determination for the marking requirement of their firearms. ATF anticipates that this proposed rule would encompass all existing determinations for firearms. Furthermore, this rule does not require that a determination request be submitted. SMEs suggest that many of the Type 7 FFLs that have not historically submitted a determination letter currently comply with the requirements. While ATF illustrates a potential cost to this provision, ATF does not anticipate any costs to existing Type 7 manufacturers of firearms. ATF requests public comments on the costs and methodology for this section.

2.4 Definition of Firearm Frame or Receiver Benefits

The new definition of “frame or receiver” would incorporate many of the innovations made by the industry. Furthermore, it would clarify to the industry what part(s) of a firearm constitutes a firearm frame or receiver. Currently, the definition of firearm frame or receiver is outdated. The proposed rule would make consistent the criteria of the parts of firearms that would need to be marked and ensure that the definition meets the same criteria as applied in ATF’s determinations. In addition, it would provide clarity to the courts on the application of the definition of firearm frame or receiver.

⁴ A loaded wage rate is hourly wage rate, including fringe benefits such as insurance. The load rate is based on the average total compensation (CMU201000000000D) / average wages and salaries (CMU202000000000D). <https://data.bls.gov/cgi-bin/surveymost?cm>.

⁵ The average wage rate of a Mechanical Engineer: <https://www.bls.gov/oes/2019/may/oes172141.htm> (accessed Mar. 8, 2021).

⁶ \$64.14 = hourly wage rate \$44.97 * load rate of 1.426.

A benefit to the new marking provisions is that it relaxes the marking burden in other ways. Currently, manufacturer and importer FFLs that mark their firearm frames or receivers need to mark the name of their company (or an accepted abbreviation of their name) in addition to identifying information such as city and state in which they operate. The current requirement may be onerous due to the amount of space available for marking. This rule would allow FFLs to continue to mark their existing firearm frames or receivers under as they do now if they have a current ATF classification, or by marking each frame or receiver of a weapon with a new design or configuration with the licensee's name, city, and state, and serial number, or with the licensee's name or abbreviated license number prefix and number (serial number) in the size and depth prescribed by existing marking requirements.

Finally, these changes require acquisition and disposition record changes to accommodate recording multiple frames or receivers (initially marked with the same serial number). Should the parts become separated and are reassembled with frames or receivers bearing different serial numbers, they would still be traceable. When each part defined as a frame or receiver is marked and recorded, this allows law enforcement officers to trace a frame or receiver found at the crime scene from the manufacturer marked on that firearm, to a licensed wholesaler, to a licensed retailer, to the first retail purchaser who may provide the key lead for investigators when solving the gun related crime. However, this assumes that every licensee in the chain properly recorded all required identifying information marked on each frame or receiver in their bound books and transaction records in accordance with this rule. Of course, the criminal in possession of the firearm involved in the crime could still remove, obliterate, or alter the serial number(s), but they would risk additional punishment under law and the possibility the serial number(s) could still be raised (read) by law enforcement.

3. Partially Complete Firearm Kits

This section addresses non-FFL manufacturers who manufacture partially complete, disassembled, or inoperable frame or receiver kits. This proposed rule defines partially complete firearm kits with incomplete receivers as firearms. In addition, the proposed rule would consider a partially complete firearm kit as one containing parts readily converted to be either a frame or receiver, or a weapon kit in which the frame or receiver within the kit must be marked. In order to account for the inclusion of increasingly popular PMFs and partially complete firearm parts kits with incomplete frames or receivers, this rule would expand the number of FFLs who would be required to mark firearms.

3.1 Need to Include Firearms Kits in the Definition of Firearm

Currently, ATF's definition of firearm frame or receiver is outdated and does not expressly account for advances in technology. As it exists, the current definition of firearm frame or receiver does not reflect the majority of firearms that are commercially available, including any of these partially complete firearms kits. While the majority of firearms manufacturers have been asking ATF for guidance as to which part of a newly developed firearm would be defined as a frame or receiver, these determinations may not be compliant with existing definitions. In particular, these partially complete firearms kits have not historically fallen under the regulatory regimes and now they would.

3.2 Population for Partially Complete Firearm Kits

This Chapter describes how the new definition of "frame or receiver" affects non-FFL manufacturers of partially complete firearm kits. For costs pertaining to partially complete firearm kits in the inventory of Type 1 FFLs, please refer to Chapter 6.

This would affect certain non-FFL manufacturers who manufacture partially made firearms kits. Since these manufacturers are not currently regulated, ATF performed an exhaustive search on the internet to estimate the number of manufactures this would affect. ATF estimates that this may affect up to 35 non-FFL manufacturers.

3.3 Non-FFL Manufacturing Costs of Partially Complete Firearm Kits

Currently, non-FFL manufacturers produce and sell partially complete kits. A lower parts kit can range in costs from \$59.99 to \$474.99.^{7,8,9,10} A handgun kit could range from \$359.99 to \$799.99.^{11,12,13} A rifle could range from \$669.99 to \$749.99.^{14,15,16} How this proposed rule would affect non-FFL manufacturers depends on how they approach these new changes. Some non-FFL manufacturers may choose to apply to become an FFL. However, given the primary marketing scheme of some of these non-FFL manufacturers, this approach seems unlikely. Therefore, ATF did not cost out any of these non-FFL manufacturers applying to become an FFL.

Another approach is that non-FFL manufacturers would choose to modify their manufacturing practice in order to continue to avoid falling under the proposed regulatory definition. In this scenario, these non-FFL manufacturers would see a reduction in revenue

⁷ \$349.99 [LR-308 Lower Assembly | Lower Parts Kit | FIRE/SAFE Billet 80% Lower \(80-lower.com\)](#) (accessed Apr. 28, 2021).

⁸ \$474.99 [AR-9 Lower Assembly | Lower Parts Kit | FIRE/SAFE Billet 80% Lower \(80-lower.com\)](#) (accessed Apr. 28, 2021).

⁹ \$59.99–\$69.99 [Glock Parts Kit | Compatible Glock 80% Lower Parts Kit \(jsdsupply.com\)](#) (accessed Apr. 28, 2021).

¹⁰ \$469.97 [Easy Jig Gen 3 Starter Kit | 80% Arms \(80percentarms.com\)](#) (accessed Apr. 28, 2021).

¹¹ \$799.99 [GST-9 Build Kit | 80% Arms \(80percentarms.com\)](#) (accessed Apr. 28, 2021).

¹² \$635.99 [Complete 10.5" 5.56/300BLK AR-15 Pistol | 80% Arms \(80percentarms.com\)](#) (accessed Apr. 28, 2021).

¹³ \$359.99 [MDX Arms V1 G23 .40S&W Compact P80 Build Kit](#) (accessed Apr. 28, 2021).

¹⁴ \$669.99 [.223 Wylde AR 15 Rifle Kit \(16" Parkerized Barrel & 12" M-Lok Handguard\) w/ 80% Lower \(80-lower.com\)](#) (accessed Apr. 28, 2021).

¹⁵ \$749.99 [.223 Wylde AR 15 Rifle Kit \(16" Parkerized Barrel & 15" M-Lok Handguard\) w/ 80% Lower \(80-lower.com\)](#) (accessed Apr. 28, 2021).

¹⁶ \$995.99 [Complete 18" AR .308 80% Build Kit | 80% Arms \(80percentarms.com\)](#) (accessed Apr. 28, 2021).

because they would no longer be able to sell a kit with an article now defined as a regulated “frame or receiver”. They would either choose to become an FFL and sell regulated frames or receivers or complete weapons (either as kits or fully assembled), or would take a loss in revenue to sell unregulated items or parts kits that do not contain a frame or receiver (*i.e.*, unregulated raw materials or molds, components, accessories, tools, jigs, or instructions), but not both. Based on the marketing of several of these companies, ATF anticipates that a likely scenario is that these non-FFL manufacturers would choose to take a reduction in revenue so as to avoid falling under the regulatory regime.^{17,18,19,20,21,22} However, ATF is unable to determine whether a company will choose to only manufacture and sell incomplete weapon parts kits or incomplete receivers. Overall, ATF is unable to determine the specific impact on revenue per company that this rule would have but expects that this rule would not have a large impact on the overall industry or market of kits containing unregulated raw materials or molds, components, accessories, tools, jigs, or instructions. Therefore, ATF did not quantify the industry’s cost for this change. However, ATF requests comments on how much this would impact a company manufacturing firearm kits in a given year.

3.4 Benefits for the Manufacturing of Partially Complete Firearm Kits

ATF anticipates a one-time surge in the markings of partially complete firearm kits already in inventory, primarily from Type 1 FFLs. Marking of partially complete firearm kits would increase the number of serialized PMFs should these partially complete firearm kits be purchased and made into PMFs. Furthermore, if these partially complete firearm kits or PMFs

¹⁷ <https://ghostguns.com/content/4-about-us> (accessed Apr. 20, 2021).

¹⁸ <https://ghostgunner.net/> (accessed Apr. 20, 2021).

¹⁹ <https://www.80-lower.com/collections/ar15-80> (accessed Apr. 20, 2021).

²⁰ <https://jsdsupply.com/> (accessed Apr. 20, 2021).

²¹ <https://americanweaponscomponents.com/welcome-to-american-weapons-components> (accessed Apr. 20, 2021).

²² <https://www.80lowerjig.com/products/premium-80-lowers-fire-safe-marked-billet-3-pack/> (accessed Apr. 20, 2021).

are stolen, they could be reported to police and insurance companies. Because these partially complete firearm kits would now be serialized, in the event that they are stolen from the Type 1 or individuals or otherwise used in criminal activities, the firearms kits (which may become PMFs) would now be traceable. Law enforcement would be able to return any recovered stolen or lost firearms kits (which may become PMFs) to their rightful owners; and use the trace information to combat firearms trafficking and other criminal activity. Furthermore, for those partially complete firearms kits that would now come under the regulated regime and become serialized, they would be less likely to be used to commit criminal activities due to their new traceability. Regulating partially complete firearm kits within the regulated market helps prevent criminals from obtaining them through FFLs by allowing ATF to locate and prosecute straw purchasers and makes it easier to trace firearms to criminals who commit firearm crimes by completing partially complete firearm kits that have been marked and recorded by FFLs under this rule. The rule also would help States and municipalities enforce their own restrictions on partially complete firearm kits because Federal law prohibits the purchase of firearms in violation of State law or published ordinance.

4. Gunsmithing

The proposed rule amends the definition of gunsmithing to allow licensed manufacturers, importers, or dealers to mark firearms for non-licensees, and for licensees under their direct supervision (previously had to be a manufacturer to mark firearms). It includes all FFLs that perform gunsmithing activities; in particular, it may encompass gunsmiths that perform custom work on firearms. However, it would require acquisition and disposition record changes to accommodate PMFs and to record multiple firearm frames or receivers if necessary.

4.1 Need for Gunsmithing

Due to an increase in partially complete firearm kits and PMFs being serialized, in order to facilitate the markings of these items, the marking requirements expand to Type 1 and Type 2 FFLs that can gunsmith.

4.2 Gunsmithing Population

While gunsmithing activities can be performed by all FFLs, this provision now allows FFLs engaged in gunsmithing to be licensed as Type 1 dealers specifically to mark firearms. For the purposes of this RIA, we have broken this provision up by population as some of the marking requirements are for Type 1 and Type 2 FFLs whose main operations are not gunsmithing activities, but rather retail sales or pawn brokering. For the purposes of this analysis, ATF is using the term gunsmith to suggest that these may be FFLs who perform more custom work on firearms. Due to the technical nature of engraving already finished firearms and for the purposes of this analysis, ATF is narrowly defining gunsmith in this subchapter as FFLs who primarily work on the aftermarket, *i.e.*, FFLs who perform custom work on firearms. Because these FFLs may also be Type 7 manufacturers, but are not necessarily manufacturers, we do not have a population for this subcategory, but rather use the estimated number of firearms that may be

affected as a population proxy. For the purposes of this analysis, ATF estimates that 3,359 FFLs would outsource their firearms to another FFL for gunsmithing work. ATF estimates that approximately 10 percent of Type 1 and Type 2 FFLs currently deal in firearm kits or PMFs. For these FFLs, all affected Type 2 FFLs and a subset of affected Type 1 FFLs would need to contract out marking costs to a gunsmith. For gunsmithing population and costs related to Type 1 and 2 FFLs, please refer to Chapter 6.

4.3 Gunsmithing Costs

ATF anticipates that there would be a one-time increase in requests for custom markings of complete or partially complete firearm kits, or PMFs that are made of polymer materials. While the FFLs that receive these firearms can mark them themselves, there may be a portion who opt to outsource their marking to another FFL that specializes in custom work. The costs for these Type 1 and 2 FFLs are outlined in Chapter 3 below. This subchapter focuses on those FFLs that provide custom work. While they may experience a one-time increase in requests, there would be an additional burden of recording these firearm frames or receivers and PMFs in their A&D records. ATF estimates it would take an FFL gunsmith 15 minutes to record a firearm into their A&D records. At a loaded, hourly wage rate of \$26.92,^{23,24} ATF estimates that it would cost the industry \$45,212 to enter A&D records.²⁵ ATF requests public comments on the costs and methodology for this section.

4.4 Benefits for Gunsmithing

The benefit to this provision in the proposed rule is that it increases the availability of persons to mark firearms to FFL dealers, and not just manufacturers. Due to the new marking

²³ Wage rates, <https://www.bls.gov/oes/2019/may/oes514022.htm> and <https://www.bls.gov/oes/2019/may/oes514031.htm>.

²⁴ \$26.92 Loaded wage rate = ((\$19.81 + \$17.94 hourly wage rates) / 2) * 1.426 load rate.

²⁵ \$45,212 industry rate = \$26.92 loaded wage rate * 6,718 A&D responses * 0.25 hours.

requirements, this provision allows additional companies to mark firearms and silencers, making it easier for FFLs, non-FFLs, and individuals to mark PMFs as needed rather than having to go take it back to a Type 7 manufacturer.

5. Silencers

This proposed rule would clarify and make consistent the marking requirements for silencers. Silencers are required by law to be marked on each part defined as a component part of a muffler or silencer for registration in the NFRTR. While this proposed change would increase the number of parts—firearm muffler or silencer frames or receivers—that need to be marked for modular silencers, this proposed change is not intended to require marking of all silencer parts when incorporated into a complete device by the original manufacturer or maker. More specifically, none of the internal nonstructural parts of a complete muffler or silencer device would need to be marked so long as each frame or receiver as defined in this rule is marked. Silencer parts sold separately will still be considered silencers that require marking unless they are transferred by qualified manufacturers to other qualified manufacturers for completion of new devices, or as replacement parts to other qualified manufacturers or dealers for repair of existing devices.

5.1 Need for Change in Markings on Silencers

This proposed rule would clarify and make consistent the marking requirements for firearms, including silencers. Currently, manufacturers can mark the housing unit or the end caps of a silencer. However, end caps of silencers wear out more readily than the housing unit; therefore, they need replacement more often. This rule would standardize marking requirements and make markings more resistant to usage. Finally, this would assist traceability of modular silencer parts that are not currently marked.

5.2 Population of Silencers

This includes manufacturers of silencers (a subset of Type 7 FFLs with a Special Occupational Tax (SOT)).

5.2.1 Population of FFL Manufacturers of Silencers

There are 517 Type 7 FFLs with an SOT that manufacture silencers. Of these silencer manufacturers, approximately 1 percent, or 5 companies, might be marking on the endcap rather than on the outer tube. This rule would not affect silencer manufacturers who already mark on the outer tube.

5.2.2 Population of Individual Owners of Silencers

This proposed rule may affect owners of modular silencers. Based on the National Firearms Registration and Transfer Record, ATF estimates that there are 101,873 individuals who have purchased silencers. For the purposes of this analysis, ATF estimates that one percent (10,187 individuals) may have purchased modular silencers. Of these individuals, only a small portion would likely need repairs.

5.3 Costs for Silencers

However, there are a few silencer manufacturers who mark their silencers on the end cap, rather than the outer tube, who would now need to mark their silencers on the outer tube. Individuals would not be able to have repairs performed on their modular pieces of their silencers without undergoing the NFA process. ATF requests public comments on the costs and methodology for this section.

5.3.1 Costs for Silencer Manufacturers

The markings on silencers are required on those external parts that hold one or more essential internal components of the device. For Type 7 FFLs that mark on the endcap, there would be minimal costs incurred to move markings from the endcap or add the same information to the outer tube. ATF estimates this cost would be minimal since these manufacturers currently mark their silencers and ATF would only be changing the location in which the silencers are

marked. This would also minimally affect manufacturers of modular silencers, who would be required to mark the outer tube with the same information that they currently mark on the end cap. While the new definitions of “frames or receivers” could affect modular silencers, many existing modular silencers have received determinations on what part must be marked. Since ATF anticipates that these determinations have already been approved, existing modular silencers would not need to serialize all their pieces. Furthermore, should new designs come onto the market, the manufacturers of these new silencers would still be able to receive variances on what part(s) are defined as a receiver.

Therefore, ATF anticipates only minimal costs associated with moving the serial number or other identifying information from the end cap or adding the same information to the outer tube on certain silencers. ATF requests public comments on the costs and methodology for this section.

5.3.2 Costs for Individual Silencer Owners

ATF does not anticipate that individuals would be affected by these new definitions of “frames or receivers,” largely because manufacturers of silencers would be able to obtain individual classifications or variances from the requirement to serialize all the modular pieces, which in turn allows individual owners to maintain modular silencers as before. ATF does not anticipate that manufacturers of silencers would pass on the price of moving the serialization of silencers from the endcap to the outer tube because ATF anticipates this would be a minimal expense for silencers. ATF requests public comments on the costs and methodology for this section.

Furthermore, there may be a savings for individual owners of lawfully marked and registered silencers. This proposed rule would now expressly allow for repairs of silencers

without having to additionally undergo the NFA process, so long as the same item is returned to the sender.

5.4. Benefits for Silencers

This proposed rule would clarify and make consistent the marking requirements for silencers. Currently, manufacturers can mark the serial number anywhere on the silencer, including the end caps of a silencer. However, end caps of silencers wear out more readily than the housing unit; therefore, they need replacement more often. This rule would standardize marking requirements and make markings more resistant to usage. This new definition of firearm frame or receiver would increase traceability of firearm frames and receivers.

6. Privately Made Firearms

A firearm, including a frame or receiver, assembled or otherwise produced by a non-licensee without any markings by a licensee at the time of production or importation is defined as a “privately made firearm (PMF)” in the proposed rule. This does not include a firearm identified and registered in the NFRTR pursuant to chapter 53, title 26, United States Code, or any firearm made before October 22, 1968 (unless remanufactured after that date).

Under the proposed rule, FFLs must mark PMFs within 7 days of the firearm being received by a licensee, or before disposition, whichever first occurs. Licensees have 60 days to mark PMFs already in inventory when the proposed rule becomes effective. FFLs that are manufacturers, importers, or dealers may mark PMFs for non-licensees, and for licensees under their direct supervision (previously had to be a manufacturer to mark firearms produced). Furthermore, the proposed rule requires acquisition and disposition record changes to record multiple frames or receivers.

6.1 Need for Markings on PMFs

Marking of PMFs allows FFLs to track their inventories, reconcile any missing inventory, respond to trace requests, process warranty claims, and report lost or stolen PMFs to police and insurance companies. Because these firearms would now be serialized, in the event that they are stolen from any licensee or otherwise used in criminal activities, the PMFs are now traceable. Law enforcement would be able to return any recovered stolen or lost PMFs to their rightful owners; and use the trace information to combat firearms trafficking and other criminal activity.

6.2 Population of Markings on PMFs

FFLs who deal in PMFs are affected in that they now have to mark their existing inventory of partially complete firearm kits and PMFs. These are primarily anticipated to be Type 1 and Type 2 retailers and non-FFL retailers who would need to become licensed.

6.2.1 Population of Non-FFL manufacturers

This would affect certain non-FFL manufacturers who manufacture partially made firearms kits. However, the discussion regarding this population was addressed in Chapter 2. For the population associated with non-FFL manufacturing and marking, please refer to Chapter 2 above.

6.2.2 Population of FFL and non-FFL Retailers

Due to the new definition of firearm frame or receiver, ATF anticipates that there will be a one-time increase in the number of requests to serialize a PMF or certain types of partially complete firearm kits. There are some FFLs that are dealers or pawnbrokers (Type 1 or Type 2 FFLs) and non-licensees that sell partially complete firearm kits. Based on ATF databases, there are 52,976 Type 1 FFLs and 7,103 Type 2 FFLs. However, not all Type 1 FFLs sell these types of items. Based on SMEs, this rule would affect a small portion Type 1 and 2 FFLs. For the purposes of this analysis, we estimate that this provision would affect 5,298 Type 1 FFLs and 710 Type 2 FFLs or 10 percent of the Type 1 and Type 2 population.

Based on a search, there are less than 36 non-FFL retailers that sell PMFs or partially complete firearm kits.

6.2.3 Population of Individuals

Individuals may not be affected by this provision. This proposed rule would not affect individuals who purchase and make PMFs at home. While there may be State requirements to

serialize their PMFs for at home use, the Federal requirements would not require serialization for non-NFA weapons.

6.3 Cost of Markings on PMFs

As stated above, this chapter primarily deals with Type 1 and Type 2 FFLs, retailers, and non-retailers in that they would now need to mark their existing and future inventories of PMFs. ATF assumes this is a one-time cost as these retailers would opt not to sell marked firearms kits or marked PMFs in the future. ATF requests public comments on the costs and methodology for this section.

6.3.1 Costs for Non-FFL Manufacturers

Non-FFL manufacturers would be affected by this provision in that they market partially complete firearm kits and would no longer be able to sell a partially complete firearm kit with partially completed frames or receivers. This cost to non-FFL manufacturers is discussed in Chapter 2 above. For costs associated with this population, please refer to Chapter 2 above.

6.3.2 Costs for FFL and non-FFL Retailers

Depending on their inventory, Type 1 and 2 and non-FFL retailers have the option to mark their inventory by purchasing embossing tools to serialize their inventory according to marking standards or sending them to another FFL as an outsourced gunsmith. For the purposes of this analysis, we assume these outsourced FFLs are FFLs that primarily perform custom work on the secondary market.

Based on anecdotal evidence of the recent market boom and SME commentary of the overall rarity of these partially complete firearm kits and PMFs, for the purposes of this analysis, ATF estimates that a Type 1 FFL would have up to 2 partially complete firearm kits that need to be marked.

For the purposes of this analysis, ATF estimates that a portion of Type 1 FFLs would serialize partially complete firearm kits themselves, while others may send completed PMFs to a gunsmith. For the purposes of this RA, we estimate that 50 percent of Type 1 FFLs would undergo this cost and 50 percent would send all their affected inventory to another FFL for marking. However, ATF assumes that the majority of Type 2 FFLs primarily sell PMFs rather than partially complete firearm kits, which would require retroactively marking these firearms. Based on SME comments, it may be too onerous to retroactively mark firearms themselves and they would likely send their PMFs to an eligible licensed gunsmith.

Should a Type 1 FFL opt to mark their inventory themselves on an existing embedded serial number plate, they could purchase an embossing tool on the commercial market for an average price of \$25.^{26,27,28,29} ATF estimates that it would take a salesclerk 15 minutes (0.25 hours) at an average hourly loaded wage rate of \$16.72.^{30,31} ATF used a loaded wage rate to account for things such as fringe benefits, making the cost to emboss 2 partially complete firearm

²⁶ https://www.amazon.com/OWDEN-Professional-Stamping-Jewelry-Stamping/dp/B07ZFDV5B2/ref=asc_df_B07ZFDV5B2/?tag=hyprod-20&linkCode=df0&hvadid=416787664074&hvpos=&hvnetw=g&hvrnd=7342267688776083427&hvpone=&hvptwo=&hvqmt=&hvdev=c&hvdvcmdl=&hvlocint=&hvlocphy=9061286&hvtargid=pla-873578206261&pssc=1&tag=&ref=&adgrpid=96493614200&hvpone=&hvptwo=&hvadid=416787664074&hvpos=&hvnetw=g&hvrnd=7342267688776083427&hvqmt=&hvdev=c&hvdvcmdl=&hvlocint=&hvlocphy=9061286&hvtargid=pla-873578206261 (accessed Mar. 9, 2021).

²⁷

https://www.amazon.com/dp/B07X2KP6WT/ref=vp_d_pb_TIER2_trans_lp_B07ZFDV5B2_pd?_encoding=UTF8&pd_rd_i=B07X2KP6WT&pd_rd_w=WmXQW&pf_rd_p=2482037c-0e6c-41b3-b0cb-39771460be9d&pf_rd_r=CJ6B5PVD9ARF4MP711&pd_rd_r=5e56d1af-d7fe-42a8-bca9-cd36d9701aa0&pd_rd_wg=ZBzZw (accessed Mar. 9, 2021).

²⁸

https://www.google.com/shopping/product/14290412635289795603?q=stamping+tools&biw=1920&bih=940&prds=eto:16926550186827271639_0&sa=X&ved=0ahUKEwirx-ep6aPvAhWDFlkFHSrGDgcQ8wIIgQ0#spf=1615313962878 (accessed Mar. 9, 2021).

²⁹

https://www.google.com/shopping/product/11558437340666580143?q=stamping+tools&biw=1920&bih=940&prds=eto:6992315103268841430_0&sa=X&ved=0ahUKEwirx-ep6aPvAhWDFlkFHSrGDgcQ8wIIgQ0#spf=1615313977818 (accessed Mar. 9, 2021).

³⁰ Cashier: <https://www.bls.gov/oes/2019/may/oes412011.htm> (accessed Mar. 9, 2021).

³¹ \$16.72 = hourly wage rate \$11.72 * load rate of 1.426.

kits to be \$4 for one or \$8 for two kits, plus \$25 to purchase an embossing tool set. The total cost to emboss 2 sets of partially complete firearm kits would be \$33.

ATF anticipates that all Type 2 FFLs will send their inventory to an FFL for marking. This is based on an assumption that Type 2 FFLs are less likely to deal in partially complete firearm kits and more likely to deal in PMFs. Since retroactively marking PMFs is assumed to be more difficult than marking partially complete firearm kits, ATF anticipates all Type 2 FFLs would outsource the marking on these PMFs. Because of the recent booming market, most PMF inventory at FFLs has been low. Should they still retain some in inventory by the finalization of this rule, they would need to mark the PMFs in their inventory within 60 days of the effective date of the rule or before disposition, whichever is sooner. ATF estimates that an average gunsmith request costs \$64 for general gunsmithing work per item.^{32,33,34,35,36} However, this average includes activities such as custom detailing and is not specific to serialization, and these FFLs may receive a better rate for bulk requests. For the purposes of this analysis, ATF estimates that FFLs may have 1 or 2 PMFs in their inventory that they did not sell prior to the implementation of a final rule. For the purposes of this analysis, we estimate that this provision would cost retailers \$126 to serialize.

If a retailer chose to turn-in these partially complete firearm kits or PMFs to the local ATF office, the cost to the public to destroy these items would be the cost to drive to the nearest ATF office, the cost of sending through the U.S. mail, or the cost of sending via private shipper.

³² <https://www.velocityworks.net/gunsmithing/gunsmithing-pricing/> (accessed Mar. 10, 2021).

³³ <https://www.lvlaserengraving.com/> (accessed Mar. 10, 2021).

³⁴ <https://www.engageithouston.com/firearm-projects> (accessed Mar. 10, 2021).

³⁵ https://tarheelstatefirearms.com/store/index.php?route=product/product&product_id=232 (accessed Mar. 10, 2021).

³⁶ <https://www.atomicengraving.com/product-category/firearms-engraving/serial-number-engraving-ca-compliant/> (accessed Mar. 10, 2021).

ATF estimates that the cost for this would be the loss in revenue and the time it takes to turn in these partially complete firearm kits or PMFs. There are approximately 488 local ATF offices throughout the US. ATF estimates that a drive to a local ATF office could range between 15 minutes to one hour (or an average of 0.652 hours). At a loaded wage rate of \$16.72, with an estimated average roundtrip drive time of 1.25 (0.652 hours * 2) hours, plus the loss in retail sales of the item of \$670.79, the per-business cost of disposal would be \$692. For the purposes of this analysis, ATF estimates that all non-FFL retailers (36 retailers) would choose this option.

Overall, this provision would cost a portion of Type 1 FFLs \$88,285³⁷ to emboss their partially complete firearm kits and it would cost the remaining Type 1 FFLs and all Type 2 FFLs \$428,608³⁸ to send their completed PMFs to a gunsmith. ATF requests public comments on the costs and methodology for this section.

6.3.3 Costs for Individuals to Mark PMFs

Because ATF does not regulate the making of firearms for a person's private use, this proposed rule is not anticipated to have costs on individuals. However, this rule would have other non-monetary impacts to individuals. More specifically, ATF anticipates that individuals would be required to mark their PMFs through an FFL being contracted out as a "gunsmith" should the individual decide to sell their PMF on the regulated market. Additionally, their PMF would be marked by a "gunsmith" should the individual decide to take it to an FFL for custom engraving or repairs. Due to the nature of individual choices with respect to PMFs, ATF anticipates that individuals would choose to forgo both of these actions. ATF requests public comments on the costs and methodology for this section.

³⁷ \$88,285 embossing cost = 2,649 Type 1 population * ((\$4 hourly burden * 2 firearm kits) + \$25 embossing tool kit).

³⁸ \$428,608 contract gunsmithing cost = (2,649 type 1 FFLs + 710 Type 2 FFL) * (\$64 contract cost * 2 PMFs).

6.4 Benefits of Marking PMFs

ATF anticipates a one-time surge in the markings of PMFs, primarily from Type 1 and Type 2 FFLs. Marking of PMFs allows FFLs to track their inventories, reconcile any missing inventory, respond to trace requests, process warranty claims and report lost or stolen PMFs to police and insurance companies. Because these firearms would now be serialized, in the event that they are stolen from the Type 1 or 2 FFLs or otherwise used in criminal activities, the PMFs are now traceable. Law enforcement would be able to return any recovered stolen or lost PMFs to their rightful owners and use the trace information to combat firearms trafficking and other criminal activity.

Furthermore, this proposed rule would help prevent criminals from obtaining PMFs through FFLs by allowing ATF to locate and prosecute straw purchasers and makes it easier to trace firearms to criminals who commit firearm crimes with PMFs that have been marked and recorded by FFLs under this rule. The rule also will help States enforce their own restrictions on PMFs because Federal law prohibits the purchase of firearms in violation of State law or published ordinance.

7. Record Retention

Currently, licensees other than manufacturers and importers do not have to store their Forms 4473 or A&D records beyond 20 years. As stated above, this rule would require Type 1, Type 2, and Type 3 FFLs (licensed dealers and collectors) to store their Forms 4473 or A&D records indefinitely. These FFLs would now be able to store their records in a separate warehouse. Based on discussion with the SMEs, it is estimated that the majority of FFLs currently retain their records indefinitely. For these FFLs, this provision of the proposed rule would not impose any additional costs. However, there are some FFLs that do not store Forms 4473 that are over 20 years old. Some of these FFLs ship them to ATF for storage or they choose to destroy the records themselves. Finally, this proposed rule would codify an FFL's ability to store records electronically.

7.1 Need for Record Retention

Currently, FFLs are not required to maintain transaction records for longer than 20 years. While the 20-year requirement would account for the lifespan of most firearms, it does not account for crimes being committed using firearms that outlast this time frame.

Not only have there been technological advances in the firearms industry, there have been technological advances in transactions and storage capabilities. Currently, FFLs are required to maintain transaction records, or Forms 4473 in paper form. The majority of FFLs perform these transactions electronically, but then have to print these same records. This proposed rule would codify the ability to store transaction information electronically.

7.2 Population for Record Retention

This would affect all Type 1, Type 2, and Type 3 FFLs as all of them are required to maintain transaction records. Because Type 3 FFLs acquire firearms for personal use, ATF

anticipates that Type 3 FFLs already store their transaction records indefinitely, or if they didn't, they would not need to rent additional storage space for these records. However, there may be some Type 1 or 2 FFLs that do not store their records beyond 20 years and do not have the space to store all records indefinitely. Based on SME estimates less than 10 percent of FFLs might not be storing records beyond 20 years. These FFLs have various means of meeting this requirement. They could 1) buy additional storage files; 2) purchase or rent additional storage; 3) ship overflow files of such records to ATF; or 4) transfer their forms onto an electronic platform. Should an FFL ship their old records to ATF, ATF anticipates they would do so on a periodic basis rather than an annual basis.

For the purposes of this analysis, ATF estimates that less than 10 percent (or 5,407 FFLs) of all dealers and collectors do not store their records longer than 20 years and would ship excess boxes to ATF for ATF to store.

7.3 Costs for Record Retention

SMEs report that the majority of FFLs maintain their 20 year or older transaction records indefinitely and that occasionally, these FFLs either deliver their overflow boxes to ATF or have ATF ship directly from the FFL to ATF. Because ATF does not charge to ship transaction records from the FFL to ATF, the industry cost for this provision is minimal.

While the industry cost for this provision is minimal, ATF would incur an increase in government costs. While the proposed rule would cause an increase in paper storage, ATF does not anticipate that each FFL that ships their old overflow records to ATF would ship every year. Based on SMEs, ATF ships boxes from 1 to 15 FFLs per shipment to ATF at an average rate of \$102 per shipment. As stated above, ATF estimates that this would mean that an additional 5,407 FFLs would have their overflow boxes of old records shipped to ATF. Since ATF

combines FFL boxes into one shipment, and that shipment ranges from one FFL to 15 FFLs, ATF estimates that the average number of FFLs boxes in a shipment is 8 sets of boxes.

Therefore, ATF estimate that the government cost for this provision is \$68,939 annually.

To alleviate costs for storage requirements, this rule would also allow electronic storage of Forms 4473. Currently, ATF has guidance allowing the electronic storage of Forms 4473. This rule codifies a FFL's ability to store Forms 4473 electronically, but storage requirements outlined in the guidance document remains the same. However, this provision places into regulation the option that's currently allowed under a variance. ATF has already provided guidance as to the requirements necessary to implement electronic storage. Should an FFL opt to store electronically, they could work with existing software developers on implementing the electronic infrastructure. ATF requests public comments on the costs and methodology for this section.

7.4 Benefits for Record Retention

Expanding the record retention requirement would have benefits in investigating criminal activities. Currently, there are a number of traces that are unsuccessful due to the age of the firearm and the fact that records do not have to be maintained after 20 years. Furthermore, allowing for electronic storage allows for the advancement of technology and eases the burden of maintaining physical copies of transaction records. The subsections below describe in further detail these benefits.

7.4.1 Law Enforcement Tracing

This proposed rule would support tracing requests for crimes committed in the US and abroad. Currently, FFLs are only required to retain transaction records up to 20 years.

Depending on the usage and care of firearms, firearms could be maintained and used for longer than 20 years, potentially in criminal activity.

For records older than 20 years, they can be disposed of, by burning or shredding. This rule would eliminate the need to incur costs to burn or shred old records. Furthermore, based on data, 1,400 to 1,600 traces a year (about 0.3 to 0.4% of all traces) are unsuccessful due to the age of the firearm and the lack of requirement to retain records longer than 20 years. Without any transaction record, enforcement officers are unable to determine who purchased firearms used in criminal activity. Because this rule requires indefinite recordkeeping, ATF would be able to increase the number of successful traces of firearms found at crime scenes. Table 7.1 shows the historical number of cases unable to trace due to age and lack of transaction records beyond 20 years.

Table 7.1 Numbers and Percentages of Traces and Traces of Firearms Over 20 Years Old

Year	Total Traces Completed	20 Year+ Firearms Traced	Percent 20+ Year Firearms Traced	20+ Year Traces Unsuccessful Due to Age	Percent of 20+ Year Unsuccessfully Traced out of 20+ Year Firearms Traced
2015	364,643	26,665	7%	1,416	5%
2016	364,183	21,702	6%	1,478	7%
2017	400,885	20,883	5%	1,610	8%
2018	425,685	21,116	5%	1,609	8%
2019	438,054	22,030	5%	1,440	7%
2020	430,227	19,414	5%	1,462	8%

7.4.2 Electronic Storage

This rule would allow for electronic storage of Forms 4473. Currently, FFLs are required to retain Forms 4473 in paper format and would thus need infrastructure to store that paperwork.

Allowing for electronic storage reduces the need for infrastructure and provides flexibility in terms of storage. It also modernizes the storage requirements to the latest technology. Finally, if FFLs store electronically, it could expedite the search for firearms transactions in tracing requests; thereby speeding up the investigation time on criminal activity.

7.5 Record Retention Collection of Information

This provision would not affect any collections of information as the number of requests and the information requested has not changed, but rather the retention would be extended.

8. ATF Form Updates

This proposed rule would modify existing forms and collections of information, such as the Form 4473, NFA Form 1 (Application to Make), NFA Form 4 (Application to Transfer), NFA Form 3 (Tax Exempt Transfers - SOTs), NFA Form 5 (Tax Exempt Transfers - Governmental Entities), the Stolen or Lost Firearms report, Form 6, Form 6A, Form 6NIA, and A&D Records, to help ensure that if more than one manufacturer or serial number is identified on any firearm, those names or serial numbers are recorded.

These provisions would affect all FFLs that maintain transaction records, but ATF anticipates that of those using paper forms, many would not need to request new forms because the majority of firearms would only have one serial number or manufacturer to log. As paper forms run out, FFLs would be able to order forms as part of their normal operations. In other words, FFLs using paper forms requested from ATF are not anticipated to incur any additional cost. For FFLs maintaining transaction records electronically, these FFLs would also only be required to update their software during their next regularly scheduled update. Because software updates occur regularly, and costs are already incorporated for those, ATF does not anticipate any additional costs would be incurred for these changes. ATF requests public comments on the costs and methodology for this section.

The benefit to these provisions is to update these regulatory changes and reflect innovation as to how firearms are being sold on the regulated market.

9. Summary of the Overall Cost of the Rule

ATF estimates that the costs for this proposed rule is minimal. There may be costs to FFLs retailers to mark their existing inventory. For the purposes of this analysis, ATF assumes that all non-FFLs would turn their unmarked inventory of PMFs to ATF rather than marking themselves. Furthermore, there would be an additional hourly burden for contract FFLs (gunsmiths) to mark and record additional entries into their A&D records. Finally, there would be additional government costs as additional FFLs submit to ATF additional overflow records due to the new retention period for Forms 4473 and A&D records.

9.1 Industry Costs

What is not included in industry costs but is accounted for in the Initial Regulatory Flexibility Act (IRFA), are costs to non-FFL manufacturers who would experience a reduction in revenue. Since this proposed rule is not anticipated to affect that particular market, the costs are not shown as part of the industry cost. Table 9.1 outlines the costs by action.

Table 9.1 Industry Cost by Action

Cost Type	Frequency	Industry Cost
Marking of Firearms	annual	minimal
Markings on Silencers	annual	minimal
Addition of PMFs and Partially complete firearm kits onto the regulated market	N/A	minimal
Self-Embossing for Type 1 FFLs	one-time	\$88,285
Contract out to another FFL or Gunsmith	one-time	\$428,608
Disposal to ATF	one-time	\$24,901
Additional A&D Records for Gunsmith	one-time	\$45,212

As shown by Table 9.1, most costs are minimal. Most costs are a one-time cost, totaling \$587,006, as incurring in the first year of the implementation of the final rule.

9.2 Government Cost

Based on SMEs, ATF ships boxes from 1 to 15 FFLs per shipment to ATF at an average rate of \$102 per shipment. Therefore, ATF estimate that the government cost for this provision is \$68,939 annually.

Total Cost of the Rule

As stated in this Chapter the potential costs of this rule are the marking requirements and the potential disposal costs associated with FFL and non-FFL retailers. There would be an additional time burden to FFLs contracted out as gunsmiths, and an annually recurring government cost to ship overflow transaction records. Table 9.2 provides the 10-year cost to the proposed rule, including government costs.

Table 9.2 Total 10-year Cost of the Rule

Year	Undiscounted	Discounted	
		3%	7%
1	\$655,945	\$636,840	\$613,033
2	\$68,939	\$64,982	\$60,214
3	\$68,939	\$63,089	\$56,275
4	\$68,939	\$61,252	\$52,593
5	\$68,939	\$59,468	\$49,153
6	\$68,939	\$57,736	\$45,937
7	\$68,939	\$56,054	\$42,932
8	\$68,939	\$54,421	\$40,123
9	\$68,939	\$52,836	\$37,498
10	\$68,939	\$51,297	\$35,045
Total	\$1,276,398	\$1,157,975	\$1,032,804
Annualized		\$135,750	\$147,048

ATF estimates that the largest industry cost to this proposed rule occurs in the first year, when all firearms and partially complete firearm kits need to be marked. The first-year cost is estimated to be \$655,945, with an annually recurring government cost of \$68,939.

The total 10-year undiscounted cost of this proposed rule would be \$1.3 million. The total 10-year discounted cost of the rule is \$1.2 and \$1.0 million at 3 percent and 7 percent respectively. The annualized cost of this proposed rule would be \$135,750 and \$147,048, also at 3 percent and 7 percent respectively.

10. Analysis of Alternatives Considered

This chapter outlines the alternatives discussed in the creation of this proposed rule.

Table 10.1 provides a summary outline of the alternatives, along with the benefits and drawbacks of each alternative.

Table 10.1 Summary of Cost and Benefits of the Alternatives

Summary	10-year 7% Discounted Costs	Benefits	Comments
Preferred Alternative	\$1.0 million	- Updates definition to technological advances - Ensures traceability regardless of age of firearm - makes consistent and eases marking requirements	Attempts to grandfather technology that has been regulatory compliant.
Alternative 1: No Change	\$0	\$0	Does not account for the majority of existing firearms
Alternative 2: Everytown Petition	Less than Preferred Alternative	Less than Preferred Alternative	Does not account for the majority of existing firearms. The majority of firearms would not fall under this definition of receiver, decreasing the overall benefits
Alternative 3: Grandfathering	Less than Preferred Alternative	Less than Preferred Alternative	Enforcement becomes a problem
Alternative 4: Serialization of All Items	More than the Preferred Alternative	More than the Preferred Alternative	ATF only regulates Federal firearm licensees

A discussion of the costs follows in the sections below.

10.1 This Proposed Rule—New definition of receiver and recordkeeping requirements.

This proposed alternative would create promulgate new definitions of “frame or receiver” and “privately made firearm”, and update existing serialization requirements, make marking requirements consistent, expand gunsmithing eligibilities to all Type 1 and Type 2 FFLs, and expand record retention to indefinite. This alternative is estimated to cost \$147,048 annualized at 7 percent, but where feasible, grandfathering was allowed to minimize costs to industry. This alternative was chosen because it maximizes benefits.

10.2 Alternative 1—No change alternative.

Individuals request that there be no change made. This alternative has no costs or benefits because it is maintaining the existing status quo. This alternative was considered and not implemented because the GCA requires that firearms be regulated. Currently, the majority of all firearms fall outside the scope of the existing definition of receiver. Due to recent court findings on what constitutes a firearm, it would be difficult to prosecute criminal activity because the vast majority of legal firearms no longer fit the definition of a firearm.

10.3 Alternative 2— Everytown petition.

A petition for rulemaking from Everytown for Gun Safety was received proposing to define “firearm frame or receiver” in 27 CFR 478.11 to read as follows: “That part of a firearm which provides housing for the trigger group, including such part (1) that is designed, intended, or marketed to be used in an assembled, operable firearm, or (2) that, without expenditure of substantial time and effort, can be converted for use in an assembled, operable firearm.” This proposed definition focuses on housing the “trigger group”; however, it does not define “trigger group” and even it did, would not address firearms that do not house trigger components within a single housing, or which have a remote trigger outside the weapon. In other words, this

alternative would fall short of addressing all technologies or designs of firearms that are currently available or may become available in the future. It also does not address potential changes in firearms terminology. Thus, while the alternative requested by this petition would reduce the cost by reducing the number of entities affected, it does not fully address the objectives of this proposed rule.

ATF considered and declined this alternative, because while it would reduce the cost of this rulemaking, it would not cover all the different types of firearms currently available.

10.4 Alternative 3— Grandfather all existing firearms and receivers.

This alternative would grandfather all existing all firearms that would not meet the serialization standard for partially complete firearms and split receiver frames on firearms and silencers. This alternative also has no costs and low benefits. That was considered and incorporated into the proposed alternative where feasible, but a complete grandfathering of all firearms, partially complete firearm kits, and PMFs was not considered. In order to enforce the rule, a complete grandfathering of existing firearms and silencers is problematic in that manufacturers could continue to produce non-compliant receivers and market them as “grandfathered receivers.”

10.5 Alternative 4—Require serialization of all partially complete firearms or split receivers and frames and modular silencers.

This would require all firearms purchased by individuals to be retroactively serialized. This would benefit individuals whose firearms are stolen. It would make it easier for owners to either retrieve stolen firearms or have them considered lost property for insurance purposes. However, the cost would increase considerably and the GCA only regulates the manufacture of

firearms by Federal firearm licensees, not the making of firearms for personal use by private unlicensed individuals. Therefore, this alternative was not chosen.

11. Initial Regulatory Flexibility Act (IRFA)

In accordance with the Regulatory Flexibility Act (RFA), ATF prepared an Initial Regulatory Flexibility Analysis (IRFA) that examines the impacts of the proposed rule on small entities (5 U.S.C. 601 *et seq.*). The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 people.

Because this proposed rule affects different populations in different ways, the analysis for the IRFA has been broken up by provision. Certain provisions may have a significant impact on certain small entities, such as non-FFL manufactures of firearm parts kits with incomplete firearm frames or receivers.

11.1 Summary of Findings

ATF performed an IRFA of the impacts on small businesses and other entities from the New Definition of Receiver proposed rule [2021R-05]. We performed this assessment using the cost information discussed in 2 through 7.

Based on the information from this analysis, we found:

- ATF estimates that this proposed rule could potentially affect 132,023 entities, including all FFLs and non-FFL manufacturers and retailers of firearm parts kits with incomplete firearm frames or receivers, but anticipates that the majority of entities affected by this rule would experience minimal or no additional costs.
- Non-FFL manufacturers are anticipated to be small and would potentially have a significant impact on their individual revenue.
- The second largest impact would be \$12,828 if a manufacturer had to retool their existing production equipment, but ATF anticipates this is unlikely because this proposed rule

encompasses the majority of existing technology. This would not affect future production because this work would be part of their normal operations in creating new firearms.

- ATF estimates the majority of affected entities are small entities that would experience a range of costs; therefore, this rule may have a significant impact on small entities.

11.2 Preliminary Initial Regulatory Flexibility Analysis

The RFA establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.”

Under the RFA, we are required to consider what, if any impact this rule would have on small entities. Agencies must perform a review to determine whether a rule will have an impact on a substantial number of small entities. Because the agency has determined that it will, the agency has prepared an initial regulatory flexibility analysis as described in the RFA.

Under Section 603(b) of the RFA, the regulatory flexibility analysis must provide and/or address:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and
- Descriptions of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

11.3 A description of the reasons why action by the agency is being considered

One of the reasons ATF is considering this proposed regulation is the failure of the market to compensate for negative externalities caused by commercial activity. A negative externality can be the by-product of a transaction between two parties that is not accounted for in the transaction.

This proposed rule would update the existing definition of frame or receiver to account for technological advances in the industry and ensure that these firearms continue to remain under the regulatory regime as intended by the enactment of the GCA, including accounting for manufacturing of firearms with split or multi-part frames or receivers. In light of recent court cases, the majority of regulated firearms may not meet the existing definition of firearm frame or receiver. This may result in no part of a firearm being regulated as a “frame or receiver” contrary to the requirements in the GCA that ensure tracing to solve crime and help prevent prohibited persons from coming into possession of weapons. Furthermore, finding information in support of criminal cases may be hindered due to the fact that records are destroyed after 20

years despite the fact that firearms may last longer than 20 years and be used in criminal activities.

This rule would also allow for advances in technology in performing transactions such as electronic storage. For more specific details regarding the need for regulation, please refer to the specific chapters pertaining to each provision of this proposed rule.

11.4 A succinct statement of the objectives of, and legal basis for, the proposed rule

The Attorney General is responsible for enforcing the GCA, as amended, and the NFA, as amended. This responsibility includes the authority to promulgate regulations necessary to enforce the provisions of the GCA and NFA. *See* 18 U.S.C. 926(a); 26 U.S.C. 7801(a)(2)(A); *id.* at 7805(a). Congress and the Attorney General have delegated the responsibility for administering and enforcing the GCA and NFA to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. *See* 28 U.S.C. 599A(b)(1); 28 CFR 0.130(a)(1)–(2). Accordingly, the Department and ATF have promulgated regulations implementing both the GCA and the NFA. *See* 27 CFR parts 478, 479.

The proposed rule provides new regulatory definitions of “firearm frame or receiver” and “frame or receiver” because they are outdated. The proposed rule would also amend ATF’s definitions of “firearm” and “gunsmith” to clarify the meaning of those terms, and to add new regulatory terms such as “complete weapon,” “complete firearm muffler or firearm silencer device,” “privately made firearm,” and “readily” for purposes of clarity given advancements in firearms technology. Further, the proposed rule would amend ATF’s regulations on marking and recordkeeping that are necessary to implement these new or amended definitions.

11.5 A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply

- ATF estimates that this rule could potentially affect 132,023 entities, including all FFLs and non-FFL manufactures and retailers of partially complete firearm kits, but anticipates that the majority of entities affected by this rule would experience minimal or no additional costs.
- ATF anticipates the majority of affected entities are small entities and would experience any range of costs; therefore, this rule would have a significant impact on a substantial number of small entities.

11.6 An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule

This proposed rule does not duplicate or conflict with other Federal rules.

11.7 Descriptions of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities

Alternative 1—No change alternative. While this alternative minimizes cost, it does not meet any of the objectives outlined in this proposed rule.

Alternative 2—Everytown petition. While this rule would reduce the cost by reducing the number of entities affected, it does not fully address the objectives.

Alternative 3—Grandfathering all existing firearms. This alternative would grandfather all existing all firearms that would not meet the serialization standard for partially complete firearms and split receiver frames on firearms and silencers. That was considered and incorporated into the proposed alternative where feasible. However, in order to enforce

regulation, a complete grandfathering of existing firearms and silencers would be problematic in that manufacturers could continue to produce non-compliant receivers and falsely market them as “grandfathered receivers.” This could potentially pose an enforcement issue that may not be resolved for years if not decades.

Alternative 4—Require serialization of all partially complete firearms or split receivers and frames and modular silencers. This would require all firearms purchased by individuals to be retroactively serialized. However, the cost would increase and the GCA does not require the same amount of regulation of privately owned firearms as it primarily is intended to regulate Federal Firearms Licensees.

12. Collection of Information

This proposed rule would call for collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Under the provisions of this proposed rule, there is a one-time increase in paperwork burdens of identification markings placed on firearms as well as additional transaction records. This requirement would be added to an existing approved collection covered by OMB control number 1140-0050 and 1140-0067.

TITLE: Identification Markings Placed on Firearms

OMB Control Number: OMB 1140-0050

PROPOSED USE OF INFORMATION: The Bureau of Alcohol, Tobacco, Firearms, and Explosives would use this information in fighting crime by facilitating the tracing of firearms used in criminal activities. The systematic tracking of firearms from the manufacturer or U.S. importer to the retail purchaser also enables law enforcement agencies to identify suspects involved in criminal violations, determine if a firearm is stolen, and provide other information relevant to a criminal investigation.

DESCRIPTION AND NUMBER OF RESPONDENTS: Currently there are 12,252 licensed manufacturers of firearms and 1,343 licensed importers. Of the potential number of licensed dealers and licensed pawnbrokers, ATF estimates that those directly affected would be a one-

time surge of 5,298 licensed dealers, 710 licensed pawnbrokers, and 36 non-licensed dealers that would be affected. This proposed rule would affect a one-time surge of 6,044 respondents.

FREQUENCY OF RESPONSE: There will be a recurring response for all currently existing 13,595 licensed manufactures and licensed importers. This proposed rule would affect a one-time number of 12,088 responses (6,044 respondents * 2 responses).

BURDEN OF RESPONSE: This includes recurring time burden of 1 minute. ATF anticipates a one-time hourly burden of 0.25 hours per respondent.

ESTIMATE OF TOTAL ANNUAL BURDEN: The current burden listed in this collection of information is 85,630 hours. The new burden, as a result of this proposed rulemaking, is a one-time hourly burden of 3,022 (6,044 respondents * 2 responses * 0.25 hourly burden per respondent).

TITLE: Licensed Firearms Manufactures Records of Production, Disposition, and Supporting Data

OMB Control Number: OMB 1140-0067

PROPOSED USE OF INFORMATION: The Bureau of Alcohol, Tobacco, Firearms, and Explosives would use this information for criminal investigation or regulatory compliance with the Gun Control Act of 1968. The Attorney General may inspect or examine the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer, without such reasonable cause or warrant, and during the course of a criminal investigation of a person or persons other than the licensee, in order to ensure compliance with the record keeping requirements of 18 U.S.C. 923(g)(1)(A) and (B). The Attorney General may also inspect or examine any records relating to firearms involved in a criminal investigation that is traced to the

licensee, or firearms that may have been disposed of during the course of a bona fide criminal investigation.

DESCRIPTION AND NUMBER OF RESPONDENTS: The current number of respondents is 9,056 firearm manufacturers, but this proposed rule would have a one-time surge for an unknown select few licensed manufacturers.

FREQUENCY OF RESPONSE: There will be a recurring response for all 9,056 licensed manufacturers, but only a one-time surge of 6,790 responses ((2,649 licensed dealer submissions + 710 license pawnbroker submissions + 36 non-licensed dealers) * 2 firearms or partially complete firearm kits) to licensed manufactures.

BURDEN OF RESPONSE: This includes a recurring time burden of 1.05 minutes. The burden resulting from this NPRM is 0.25 hours per set of submittals by licensed dealers and licensed pawnbrokers to licensed manufacturers.

ESTIMATE OF TOTAL ANNUAL BURDEN:

The current burden listed in this collection of information is 201,205 hours. The new burden, as a result of this proposed rulemaking, is 1,698 hours (6,790 responses * 0.25 hours).

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the OMB for its review of the collections of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information becomes effective, we will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the proposed collection.