

UNDETECTABLE FIREARMS

Despite the sensational headlines about cases of “undetectable” firearms, all firearms are heavily regulated under current federal law, regardless of how they are manufactured. The 1968 Gun Control Act, the 1988 Undetectable Firearms Act and other federal laws all govern firearms produced by a 3D printing process or any other process, just as they apply to conventional manufacturing processes using machine tools.

What does it mean for a firearm to be “undetectable?” Some headlines suggest that 3D printed firearms are undetectable, as they are primarily made of polymer materials, not metal. Others warn about scary-sounding “ghost guns” that cannot be traced by law enforcement due to a lack of a serial number.

3D PRINTERS CANNOT PRODUCE AN UNDETECTABLE FIREARM

Setting aside the fact that 3D printing is a high cost, limited production technology that does not present a public safety risk, it is already illegal under the federal Undetectable Firearms Act to manufacture, import, sell, ship, deliver, possess, transfer, or receive an undetectable firearm. Even firearms produced with 3D printing technology are required to include a major component made of metal, and hence detectable by metal detectors and x-ray machines. In addition, ammunition cartridges are made with metal components that are detectable. Of course, even

without metal components, current Transportation Security Agency (TSA) screening machines will detect an object, regardless of its composition.

GHOST GUNS ARE A GUN CONTROL BOOGYMAN

Americans have always had the ability to legally make firearms on their own and some choose to do so as a hobby. It has not created a wave of “ghost guns.” It has allowed individuals who are passionate about building their own firearms to assemble them in their homes. This is the exception, not the rule. The overwhelming majority of firearms are bought through commercial sales, produced by manufacturers and sold by retailers that are federally licensed and regulated.

Due to the time consuming nature of 3D printing, hobbyists have sought more practical ways to create a firearm for personal use, primarily through utilization of “80% lowers”. These frames are available for various models of firearms and are required to be marked by federally licensed firearm retailers under the ATF’s definition of a firearm.¹

These “80% lowers” are closer to a hunk of plastic or metal than a working firearm receiver. End users are required to perform meticulous drilling and labor with hand tools in order to create a working firearm component. It is important to note that this legal activity is still regulated by state and federal firearm laws, an obligation that hobbyists are responsible to know and conform to. The benefit to this hobby is being



able to build a personalized firearm with the particular parts the owner wants rather than purchasing a fully functional firearm and incurring the added expense of swapping parts for a customized look and feel. Unmarked “80% lowers” that are brought to a gunsmith or firearm retailer for work and retained must be marked before returned to the owner.²

What is not legal, is manufacturing firearms intended for sale without a federal firearms license. As established by the Gun Control Act of 1968, federal law requires a license to engage in the business of dealing firearms.³ The term at stake is “engaged in the business,” which is defined in current Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulations. The term “engaged in the business,” as applicable to a firearms dealer, is defined as a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business predominantly earn a profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of

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firearms.⁴

In order to comply with the law, a new “dealer” would need to apply for and obtain a license, including paying the required fees and submitting to a background check and fingerprinting, comply with state and local laws (including state licensing in the 15 states where required), local business laws, and zoning laws which may or may not allow the individual to operate what would likely be a home-based firearms business. The “licensed premises,” likely the gun owner’s private home, would have to be open to ATF inspection once a year.

ATF policy for many years has been that the licensed premises must be open to the public. Indeed, item 11 of ATF Form 7, Application for License, requires applicants to list hours of operation for all seven days. Applicants would have to get ATF approval to operate by appointment only.

Among myriad other requirements, the new licensee must keep and maintain for life federally mandated records on the acquisition and disposition of firearms and must keep any form 4473 until the business or licensed activity is discontinued.⁵ All firearms

in their collection which are for sale would have to be entered into the acquisition and disposition record. In addition, they would have to register with the Federal Bureau of Investigation’s background check system, the National Instant Criminal Background Check System (NICS), request the FBI or Point of Contact (POC) state to run the background check for each transfer, report to ATF and their local chief law enforcement officer on the multiple sale of handguns to the same person within a 5 day period, report lost or stolen firearms to the ATF and to local authorities within 48 hours, and provide Youth Handgun Safety Act notices and a gun safety device with each handgun sold. When a licensee goes out of business, which might include any year that they would dispose of fewer firearms than the number established by regulation, it must send its required records to the ATF Out of Business Records Repository.

Firearms are not the only area where such a distinction exists between a hobby and a business. Consider the fact that it is perfectly legal to prepare dinner for one’s family and friends in one’s home without a federal license. Yet, if the

same person decides to open a restaurant and prepare the same food for others as a business, that business is subject to a set of laws and regulations designed to keep the restaurant industry safe. Federally licensed firearms retailers are committed to following the laws and regulations that apply to their businesses.

CRIMINALS BREAK THE LAW

If the argument is that criminals won’t follow the existing laws and regulations, there is no evidence they will abide by new laws. By definition, criminals don’t have respect for the law. According to a government survey of prison inmates, over 90 percent of inmates obtained their firearms from an illegal or black-market source or from friends and family. Enacting further laws at the state or federal level to make the possession of an illegal firearm more illegal will not deter criminal behavior.

Rather than layering another level of regulation on law-abiding hobbyists and businesses, lawmakers should seek enforcement of the existing stringent laws and regulations.

¹ <https://www.atf.gov/firearms/docs/guide/overview-final-rule-2021r-05f-definition-%E2%80%9Cframe-or-receiver%E2%80%9D-and-identification/download>

² <https://www.atf.gov/firearms/docs/guide/overview-final-rule-2021r-05f-definition-%E2%80%9Cframe-or-receiver%E2%80%9D-and-identification/download>

³ Section 923(a), Title 18, U.S.C.

⁴ <https://www.congress.gov/bill/117th-congress/senate-bill/2938/text>

⁵ <https://www.atf.gov/firearms/docs/guide/overview-final-rule-2021r-05f-definition-%E2%80%9Cframe-or-receiver%E2%80%9D-and-identification/download>