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Via Federal eRulemaking Portal and U.S. Mail

The Honorable Todd Blanche,
Acting Attorney General of the United States

Robert Cekada,
Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

c/o: ATF Rulemaking Comments
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Attn: DOJ ATF RIN 1140-AA88

Re: *Defining “Willfully” for Firearms Violations, 91 Fed. Reg. 25,201 (May 8, 2026), Docket No. ATF-2026-0265*

Dear Acting Attorney General Todd Blanche and ATF Director Robert Cekada,

We, the Attorneys General of New York, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and Washington (“the States”), submit this comment in response to the Bureau of Alcohol, Tobacco, Firearms, and Explosives’s (“ATF”) Proposed Rule, Defining “Willfully” for Firearms Violations, 91 Fed. Reg. 25,201 (May 8, 2026) (to be codified at 27 C.F.R. part 478) (“the Proposed Rule”).

We strongly urge ATF to withdraw the Proposed Rule. The Proposed Rule would, for the first time, define via regulation the *scienter* standard for a willful violation of the Gun Control Act (“GCA”) under 18 U.S.C. § 923(e), based on which a federal firearms licensee (“FFL”) may have its license revoked. But rather than “clarify” the law or resolve any “regulatory ambiguity”—as ATF claims this Proposed Rule would do—ATF’s new definition of willfulness would upend

decades of settled law in this area. There is no lack of clarity or regulatory ambiguity here: to the contrary, consistent with the ordinary meaning of “willfully” in the civil context, courts have uniformly interpreted § 923(e) to require a rigorous showing that an FFL acted with purposeful disregard or deliberate indifference of the law, and ATF’s longstanding practice has accorded with that well-settled understanding. ATF’s proposal to import the criminal standard for willfulness into this civil context is thus contrary to law: ATF cannot override binding appellate precedent via regulation, and ATF’s newfound interpretation of § 923(e) is erroneous on its own terms. ATF’s proposal is also poorly reasoned because it rests on a mischaracterization of existing law and is wholly unsupported by evidence. In fact, ATF has not identified a single instance of an FFL having its license revoked for so-called inadvertent mistakes or unintentional violations of the GCA.

The practical harm to the States from this proposal would be severe. By requiring ATF to prove criminal-level intent before taking *any* civil or administrative action, the rule would collapse the GCA’s three-tiered enforcement scheme into criminal prosecution alone. Dealers that fail to conduct background checks, falsify records, transfer firearms to prohibited persons, ignore trace requests, or obstruct inspections could retain their licenses unless ATF proved they knew their conduct was unlawful. That would render the GCA’s civil and administrative safeguards largely meaningless and undermine the federal licensing system on which States have long relied to identify dangerous dealers, remove them from the marketplace, trace crime guns, and enforce the States’ own public safety laws.

For these reasons, and others explained below, the Proposed Rule exceeds ATF’s statutory authority and is arbitrary and capricious under the Administrative Procedure Act (“APA”).

I. Statutory and Regulatory Background

A. The Gun Control Act

In the Gun Control Act, Congress established a comprehensive regulatory framework to govern firearms transactions. Central to that scheme is the requirement that a person obtain a license before engaging in the business of importing, manufacturing, or dealing in firearms. 18 U.S.C. § 923(a). A federal firearms licensee must comply with numerous recordkeeping, due diligence, and other obligations. *See, e.g.*, 18 U.S.C. §§ 922, 923, 925B, 932. The firearms licensing system is crucial to ensuring that records are properly preserved so that law enforcement can properly trace firearms used to commit crime, that firearms are not sold to prohibited persons, that prohibited firearms are not unlawfully imported or manufactured, and that the GCA’s other protections are not otherwise circumvented. *See Huddleston v. United States*, 415 U.S. 814, 824–29 (1974) (explaining that the federal scheme centers on the licensed dealer, and the records dealers must keep, to keep firearms from those not legally entitled to them).

As originally enacted, 18 U.S.C. § 923(e) permitted the Secretary of the Treasury (a function since transferred to the Attorney General) to revoke an FFL’s license if the FFL “violate[s]” any provision of the GCA, or regulations promulgated under the GCA. In 1986, Congress amended § 923(e) to permit revocation only if an FFL “willfully violate[s]” the GCA. Pub. L. 99–308, 100 Stat. 449 (May 19, 1986). Neither the statute nor current regulations define “willfully.” However, since the GCA was amended, courts have uniformly interpreted § 923(e) to mean that a person acts “willfully” if they know their legal obligation under the GCA and either

purposefully disregard it or is plainly indifferent to it. *Simpson v. Attorney General*, 913 F.3d 110, 114 (3d Cir. 2019). The Proposed Rule thus abandons not merely a longstanding agency practice, but the legal interpretation ATF has affirmatively defended in court and applied for forty years.

B. The Proposed Rule

ATF proposes to define “willfully” in a new regulation, contrary to settled judicial interpretation, as follows:

“[W]illfully” means that the person intends to engage in conduct that the law forbids and acts with actual knowledge that the person’s conduct is unlawful.

91 Fed. Reg. at 25,209 (proposed § 478.73(c)). ATF also proposes regulations explicating how this definition would apply to certain fact patterns. *First*, ATF notes that while “[e]vidence of repeated violations with knowledge of the law’s requirements may be sufficient to establish willfulness,” that will not always be the case, including where those violations “resulted from inadvertent error.” *Id.* (proposed § 478.73(c)(1)). *Second*, ATF notes that “willful blindness” suffices to meet the actual knowledge requirement. *Id.* (proposed § 478.73(c)(2)). *Third*, ATF proposes a new regulatory definition describing when supervisors would be liable for their employees’ violations of the GCA. Under the Proposed Rule, an FFL acts “willfully” based on their employee’s conduct if they have (1) “actual knowledge that the employee has violated a law or regulation” and (2) “ratifies the violation” by doing one of three things:

- (i) Failing to take action to cure the violation, if the violation is susceptible of being cured;
- (ii) Concealing the violation; or
- (iii) Failing to take appropriate remedial or disciplinary action against the employee who committed the violation.

Id. (proposed § 478.73(c)(3)).

ATF says that the Proposed Rule is needed in order to offer greater clarity to the public and to regulated industry, to reduce the risk that “unwarranted or unintentional violations” would result in license revocations, and to accord the willfulness standard for a civil violation under § 923(e) with the willfulness standard for a criminal violation under § 924. 91 Fed. Reg. at 25,205.

II. The proposed rule would violate the APA.

A. The proposed rule is contrary to law and exceeds ATF’s statutory authority.

ATF’s interpretation of “willfully” is contrary to law and exceeds its statutory authority. Since Congress amended § 923(e) in 1986, the “unanimous view of all the Courts of Appeals to have addressed this issue” is that willfulness requires a showing that a person knows of their legal obligation and purposefully disregarded it or was deliberately indifferent to it, but willfulness does not require a person to have actual knowledge that they are acting unlawfully. *Simpson*, 913 F.3d at 114. ATF’s own proposal concedes the point: “All nine of the circuits have held that ‘willfulness’ for license revocation occurs ‘where the licensee knew of his legal obligation and purposefully disregarded or was plainly indifferent to the requirements.’” 91 Fed. Reg. at 25,203. That reading

accords with ATF’s longstanding interpretation. *See id.* (noting that “both parties in this case agree with [the] willfulness standard” that the court ultimately adopted). And because that “agency interpretation[]” has “remained consistent over time,” it is “useful in determining the statute’s meaning.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). Congress, moreover, has amended the GCA since those decisions—most recently in the Bipartisan Safer Communities Act, Pub. L. No. 117–159, 136 Stat. 1313 (2022)—without disturbing the courts’ uniform construction of § 923(e).

That interpretation is also consistent with the foundational principle in the law that the *scienter* requirement for civil violations is generally lower than the *mens rea* requirement for an analogous criminal violation. As the Supreme Court has explained, “where willfulness is a statutory condition of civil liability, we have generally taken it to cover not only knowing violations of a standard, but reckless ones as well.” *Safeco Ins. Co. v. Burr*, 551 U.S. 47, 57 (2007). Here, the consequence for violating § 923(e) is civil—loss of a license—not criminal.

ATF acknowledges that its new regulation runs contrary to the established and settled judicial interpretation of its statute, and contrary to its past practice. *See* 91 Fed. Reg. at 25,203 & nn. 5, 6 (collecting cases from the federal courts of appeals). Nevertheless, ATF seeks to overturn that interpretation through rulemaking, without identifying any statutory amendment or intervening Supreme Court case that would call those decisions into question. That approach is flatly inconsistent with *Loper Bright*, in which the Supreme Court made clear that courts, not agencies, ultimately decide questions of statutory interpretation. 603 U.S. at 394. ATF cannot use rulemaking to overturn an established, authoritative judicial interpretation of its own statute simply because it disagrees with those courts’ holdings.

Even setting aside the settled judicial construction of § 923(e), ATF’s interpretation is erroneous. ATF primarily argues that “willfully” in § 923(e) should have the same meaning as “willfully” in 18 U.S.C. § 924(a)(1)(D), a provision of the GCA governing criminal violations, and which the Supreme Court interpreted in *Bryan v. United States*, 524 U.S. 184 (1998). But *Bryan*’s analysis starts from the principle that “[t]he word ‘willfully’ is sometimes said to be ‘a word of many meanings’ whose construction is often dependent on the context in which it appears.” *Id.* at 191. The Court continues: “Most obviously it differentiates between deliberate and unwitting conduct, but *in the criminal law* it also typically refers to a culpable state of mind,” and “when used *in the criminal context*, a ‘willful’ act is one undertaken with a ‘bad purpose.’” *Id.* (emphases added). *Bryan*’s analysis explicitly turned on the fact that the statute there was criminal, notwithstanding ATF’s claim that this was merely “part” of the Court’s reasoning. 91 Fed. Reg. at 25,202.

ATF asserts that “[i]t makes little difference” that violations of § 923(e) carry civil, as opposed to criminal violations, but that *ipse dixit* does not rebut the deeply rooted civil-criminal distinction that suffuses the legal system. On this score, ATF’s attempt to distinguish *Safeco Insurance Co. v. Burr* is unpersuasive. Contrary to ATF’s narrow reading of that case, *Safeco*’s interpretation of “willfully” was not limited to the statutory structure at issue there but rather reflected the “standard civil usage” of the term “willfully,” and “the general rule that a common law term in a statute comes with a common law meaning, absent anything pointing another way.” *Safeco*, 551 U.S. at 57–58.

The structure of the GCA confirms the point. Congress created a graduated set of remedies for licensee misconduct: criminal prosecution under 18 U.S.C. § 924(a)(1)(D); license denial under § 923(d); license revocation under § 923(e); and license suspension and civil fines for certain violations, *see* §§ 922(t)(5), 924(p). By conditioning civil and administrative remedies on proof of the criminal standard, the Proposed Rule collapses Congress’s separate enforcement tiers into one and renders the civil tier a practical dead letter: where ATF can prove that a licensee subjectively knew its conduct was unlawful, it would ordinarily proceed by criminal prosecution. And because § 923(d)(1)(C) conditions license denial on the same “willfully violated” language, ATF could not even deny a license to a repeat violator absent criminal-level proof. The Proposed Rule does not explain why Congress would have created these distinct civil and administrative remedies if each was to carry a criminal-law threshold in practice.

Because ATF’s new interpretation of § 923(e) contravenes the established judicial interpretation of that statute, and is wrong on its own terms, the Proposed Rule is contrary to law and exceeds ATF’s statutory authority.

B. The Proposed Rule is arbitrary and capricious.

Even if ATF had statutory authority to redefine “willfully” under § 923(e), the Proposed Rule is arbitrary and capricious under the APA. Agency decision-making must be rational. An agency fails that standard when promulgating a regulation if it relies on factors Congress did not intend, fails to consider important aspects of the problem, or offers an explanation that is counter to the evidence it has or is otherwise implausible. *Motor Vehicle Manufacturers Ass’n v. State Farm*, 463 U.S. 29, 43 (1983). When an agency changes course, it must also “display awareness that it is changing position” and provide “a more detailed justification” where its “new policy rests upon factual findings that contradict those which underlay its prior policy” or where “its prior policy has engendered serious reliance interests that must be taken into account.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). The Proposed Rule fails this standard for numerous reasons.

1. The Proposed Rule rests on a mischaracterization of current law and agency practice.

ATF’s principal justification for the Proposed Rule is to guard against the supposed danger that FFLs will have their licenses revoked based on “inadvertent errors” or “unintentional violations” of the GCA. 91 Fed. Reg. at 25,202–203. Throughout the preamble, ATF invokes the specter that “[s]imple paperwork mistakes” such as unintentionally checking the wrong box or missing a line on a form has led to or will lead to licenses being revoked. *Id.* at 25,204; *see also id.* at 25,207 (stating that “[m]any” of the violations that would no longer qualify under the Proposed Rule “are likely minor and not due to purposeful evasion”).

That framing fundamentally mischaracterizes existing law. ATF implies that willfulness under § 923(e) currently means something akin to mere negligence. To the contrary, every court of appeals to have interpreted § 923(e) has held that revocation requires more than negligence. As described, the settled standard is that willfulness under § 923(e) requires ATF to show that an FFL knew of its legal obligation and either purposefully disregarded it or was plainly indifferent to it. *Simpson*, 913 F.3d at 112. In so doing, courts have explicitly required ATF to show evidence

beyond “inadvertent errors or technical mistakes”—*i.e.*, more than “mere negligence”—in order to satisfy the willfulness requirement. *Borchardt Rifle Corp. v. Cook*, 684 F.3d 1037, 1043–44 (10th Cir. 2012). This is a rigorous standard that requires a showing of intent, albeit not the state of mind that would be required to prove criminal guilt.

Similarly, ATF inaccurately characterizes the prior administration’s policy¹ as “lowering the bar, in practice, from intentional/reckless wrongdoing to negligence.” *Id.* The policy did nothing of the sort. DOJ previously explained that “[l]icensed firearms dealers are often our first line of defense against gun crime and a source of critical enforcement information,” but that ATF would seek revocation, absent exceptional circumstances, “for those dealers who **willfully** break the law and put public safety at risk by violating certain ATF requirements.”² The policy thus addressed the consequence of certain willful violations—and in no way purported to define or change the willfulness standard under § 923(e)—and the Proposed Rule identifies no such language redefining that standard or reducing it to negligence. Nor did that policy target trivial paperwork errors. It applied to willfully transferring a firearm to a prohibited person, failing to conduct a required background check, falsifying records, failing to respond to a trace request, or refusing an ATF inspection.³ Those violations compromise the core safeguards of the federal licensing system: keeping firearms out of the wrong hands, preserving the records necessary to trace crime guns, and permitting ATF to identify and address unlawful conduct.

ATF’s assertion about the Government’s own prior position fares no better. The Proposed Rule states that “the Government has previously argued that unintentional violations may be ‘willful’ under the GCA’s civil revocation proceedings,” 91 Fed. Reg. at 25,202, but it cites no brief, decision, or statement in which the United States took that position. For four decades, the Government’s actual litigating position—advanced and vindicated across the federal circuit courts of appeal—was the purposeful-disregard-or-plain-indifference standard, which by its terms excludes purely unintentional conduct. ATF’s own current guidance is to the same effect: in August 2024, ATF issued Order 5370.1G, which recognizes that not every repeat violation is *per se* willful and that isolated inadvertent errors may not be willful even where the licensee knew of the requirement.⁴ The Proposed Rule never acknowledges that Order or explains why it is inadequate, and ATF has removed from its website the Final Notices of Revocation issued under the prior policy—records that document serious, repeated misconduct rather than inadvertent error. ATF should identify the prior “position” on which it relies, restore the removed revocation records to this docket, and reissue the proposal to allow the public to comment on both.

¹ Fact Sheet: Biden-Harris Administration Announces Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety (Jun. 23, 2021), <https://perma.cc/5KPZ-X6AK> (“Zero Tolerance Policy”).

² DOJ, *Justice Department: Violent Crime Reduction Efforts* 4 (Feb. 9, 2022), <https://www.justice.gov/file/1191591/dl?inline> (emphasis added).

³ ATF, Archived Enhanced Regulatory Enforcement Policy page available at <https://web.archive.org/web/20250407190454/https://www.atf.gov/rules-and-regulations/enhanced-regulatory-enforcement-policy>. ATF has since removed both this explanation and the underlying enforcement data from its website, depriving the public of the very materials needed to test its new characterization—and obscuring that ATF’s actual enforcement practices during the prior administration bear little resemblance to the account offered in the Proposed Rule.

⁴ ATF Order 5370.1G, Federal Firearms Administrative Action Policy and Procedures (Aug. 29, 2024).

All of ATF's reasoning flows from these faulty premises, and the Proposed Rule is therefore not the product of reasoned decision-making.

2. The Proposed Rule is supported by zero evidence.

The narrative that, in the status quo, licenses are being revoked for unintentional errors not only rests on a mischaracterization of current law, it is wholly unsupported by evidence. As described, the Proposed Rule repeatedly claims that § 923(e) is causing FFLs to lose their licenses or face civil proceedings based on their “inadvertent errors,” “technical mistakes,” or “paperwork” violations. But ATF identifies no evidence to support those claims. In fact, the Proposed Rule does not cite a single example in which an FFL had its license revoked on this basis. Nor does ATF provide data, adjudicatory decisions, or court cases suggesting as much. Instead, ATF relies on overgeneralized descriptions of the agency's prior practice, but again, ATF offers no concrete evidence or examples supporting its claims that ATF has ever revoked an FFL's license for “unintentional” violations of the GCA. *See* 91 Fed. Reg. at 25,204. And if ATF did rely on data in support of those claims, it must disclose that data so that the public may see the data and comment accordingly.⁵ *See Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227 (D.C. Cir. 2008).

The same evidentiary deficiencies undermine the Proposed Rule's new limitations on supervisor liability. The Proposed Rule posits that a “single rogue employee” could imperil an entire large business, “regardless of the due care shown by managers and owners,” but the Proposed Rule identifies no evidence—or even a single example—showing that such cases are occurring with any frequency (or even at all). ATF also states that its proposed regulatory approach to supervisor liability in the Proposed Rule accords with “current practice” but does not explain why that current practice—whether set forth in guidance or otherwise—is deficient.

3. ATF fails to reasonably assess the consequences of narrowing the civil enforcement standard.

The Proposed Rule would “raise the threshold for what qualifies as a violation that could result in a suspension, revocation, or civil fine,” and ATF therefore predicts that it would lead to fewer licenses being revoked. 91 Fed. Reg. at 25,207. ATF acknowledges that, as a result, the Proposed Rule carries “potential qualitative costs in the form of greater risks to public safety.” *Id.* at 25,206–207. Specifically, ATF recognizes that the Proposed Rule could lead to prohibited

⁵ The evidentiary vacuum is of ATF's own making. Records bearing directly on the factual premise of this rulemaking existed, and ATF itself published them: the Final Notices of Revocation issued under the prior enforcement policy, together with the underlying inspection results. *See* ATF, Archived Enhanced Regulatory Enforcement Policy page (Apr. 7, 2025), <https://web.archive.org/web/20250407190454/https://www.atf.gov/rules-and-regulations/enhanced-regulatory-enforcement-policy>. In April 2025, ATF removed those materials from its website. *See* ATF, Archived Enhanced Regulatory Enforcement Policy page (Apr. 9, 2025), <https://web.archive.org/web/20250409101421/https://www.atf.gov/rules-and-regulations/enhanced-regulatory-enforcement-policy>. An agency cannot assert that licenses have been revoked for inadvertent errors, decline to cite the very records that would test that assertion, and simultaneously withdraw those records from public view; if the Final Notices supported ATF's account, ATF presumably would have cited them. The States request that ATF restore the complete Final Notice dataset and associated inspection data to the administrative record for this rulemaking so the public can evaluate ATF's characterization and comment on it. *Cf. Walter O. Boswell Mem'l Hosp. v. Heckler*, 749 F.2d 788, 792 (D.C. Cir. 1984) (“To review less than the full administrative record might allow a party to withhold evidence unfavorable to its case, and so the APA requires review of the whole record.”).

persons obtaining firearms without a background check, FFLs failing to respond timely to trace requests in pursuit of unlawful firearms, including people who commit crimes, or “similar consequential violations.” *Id.* at 25,207. Beyond stating these likely costs in broad strokes, however, ATF does not meaningfully grapple with those costs or otherwise attempt to analyze the public safety impact of the Proposed Rule. In stark contrast, ATF quantifies the expected benefits of the Proposed Rule, measured in reduced hearing costs for licensees and amounting to less than \$250,000 annually to “industry” as a whole. That asymmetrical treatment of costs and benefits is unjustified. The costs and benefits here are also intertwined: the public safety costs here are a direct result of the supposed benefits to industry as a result of fewer revocation proceedings.

Even if ATF is correct that precisely quantifying the public safety risks would be difficult, it does not explain what weight it assigned those risks or why the Proposed Rule’s purported quantitative benefits outweigh its qualitative costs. Even accepting ATF’s benefits analysis, it is unclear why less than \$250,000 in annual savings to all FFLs would outweigh the acknowledged risks of serious injury or death and the additional costs to law enforcement who will have to expend additional resources investigating crimes linked to guns.

The ATF Director’s own recent submissions to Congress confirm the scale of what is at stake. In responses to Questions for the Record following his confirmation hearing, Director Cekada reported that ATF conducted 9,190 FFL compliance inspections and cited 12,768 violations in calendar year 2024, and that “[i]n FY 2025, 89 licenses were revoked for willful violations of the Gun Control Act.”⁶ His annual charts for 2015 through 2024 reveal at least 2,386 failures to conduct required NICS or point-of-contact background checks; 696 unlawful sales or deliveries to prohibited persons; 9,067 failures to report multiple handgun sales; 17,300 failures to obtain a completed Form 4473; and 24,389 trace-critical recordkeeping violations, including 14,648 acquisition-and-disposition-record violations, 6,520 failures to record firearm information on Form 4473, and 3,221 manufacturer- or acquisition-record violations. Together, that is at least 53,838 cited violations across these background-check, transaction, and traceability categories alone. *See* Responses of Robert Cekada to Questions for the Record, at 39–42 (Feb. 4, 2026). Even these figures materially understate the problem: because ATF disclosed only each year’s ten most-cited violations, the failure-to-conduct-a-background-check category disappears from the charts after 2020 and the prohibited-person-transfer category after 2016, while the charts provide no totals for falsified records, ignored trace requests, or refused inspections. Yet ATF proposes to require subjective knowledge of unlawfulness without analyzing how that heightened standard would affect its ability to impose meaningful civil or administrative consequences for any of these violations. Before finalizing the rule, ATF must place the complete violation-type data in the docket and conduct that analysis.

Nor can criminal prosecution fill the resulting enforcement gap. DOJ’s Inspector General identified only seven criminal investigations of FFLs arising from ATF referrals between October 1, 2017, and April 1, 2021—roughly two per year—and ATF has acknowledged that criminally charging an FFL business is “relatively uncommon.” *See* DOJ Office of the Inspector General, *Audit of ATF’s Risk-Based Inspection Selection Processes and Administrative Actions Issued to*

⁶ Questions for the Record from Senator Durbin for Robert Cekada (Feb. 4, 2026), https://www.judiciary.senate.gov/imo/media/doc/3502d997-daa5-f550-7914-e7d18cc5b59b/2026-02-04_QFR-Responses_Cekada.pdf (“Cekada Responses”).

Federal Firearms Licensees, at 38 (Apr. 2023); Cekada Responses, *supra*. Administrative enforcement is therefore not a marginal supplement to criminal prosecution; it is the principal mechanism for policing FFL compliance. By requiring proof that a licensee subjectively knew its conduct was unlawful before ATF may revoke its license, the Proposed Rule would foreclose meaningful administrative action in many cases that would not realistically result in criminal prosecution, leaving no effective substitute for removing noncompliant dealers from the market. ATF never acknowledges, much less analyzes, that substantial consequence.

ATF similarly fails to assess the consequences of its proposed supervisory liability standards. ATF vaguely asserts, without evidence or reference to any guidance documents or similar supporting materials, that this provision would simply codify its existing practice. Even if this is true, ATF has not considered whether such a narrow standard is appropriate or whether requiring actual knowledge and ratification will encourage lax supervision and attention to compliance, especially at large stores. This is particularly concerning given that federal courts allow for significantly broader forms of supervisory liability, as ATF acknowledges. These are important aspects of the problem that ATF failed to meaningfully consider.

ATF also predicts that the Proposed Rule would have “qualitative benefits to current and future FFLs” in the form of “greater clarity and predictability to regulated licensees.” 91 Fed. Reg. at 25,205. That conclusion is difficult to understand. As explained, the law in this area has been settled for decades; courts have uniformly interpreted § 923(e), and ATF has abided by that interpretation. If anything, the Rule would create chaos and uncertainty for the industry, which would be unsure if the regulations are valid in light of contrary appellate decisions interpreting the statutory language that ATF seeks to reinterpret through the Proposed Rule. ATF failed to explain how the Proposed Rule will interact with federal courts of appeal precedent, and relatedly how it would create more, not less clarity given the robust caselaw interpreting § 923(e).

These unexamined consequences will also fall directly on state and local governments. ATF nevertheless posits, without explanation or support, that the Proposed Rule “would not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government.” 91 Fed. Reg. at 25,207–208. The States’ experience suggests otherwise. The Proposed Rule will make it harder for federal and state law enforcement to ensure that FFLs are complying with their obligations under the GCA, which is a crucial mechanism for protecting public safety. While some of the undersigned States conduct their own inspections of firearms dealers, others do not. And even those States with inspection systems in place still rely on ATF to respond appropriately when FFLs violate federal gun laws willfully, and the inspections systems of those States work best when operating in tandem with a rigorous federal inspection scheme. That reliance is unavoidable: no State can inspect out-of-state dealers or revoke a federal firearms license. Weakening ATF’s enforcement authority will therefore shift investigative and enforcement burdens to the States without providing them an equivalent regulatory remedy. ATF must conduct an appropriate federalism analysis for the Proposed Rule under Executive Order 13,132.

ATF also failed to consider the States’ serious reliance interests in the existing federal enforcement regime. *See DHS v. Regents of the University of California*, 591 U.S. 1, 30 (2020). States have structured their law enforcement systems around the federal licensing, inspection, recordkeeping, and tracing framework, as well as around ATF’s longstanding ability to revoke

dealers who purposefully disregard or are plainly indifferent to their legal obligations. Massachusetts law, for example, requires law enforcement to trace every firearm used in a criminal act, automatically transmit the resulting data into ATF's federal system, and submit associated cartridge casings to the National Integrated Ballistic Information Network; it also requires local licensing authorities, or the State Police when necessary, to inspect every Massachusetts firearms dealer annually. *See* Mass. Gen. Laws ch. 140, §§ 123(n), 131Q. Those statutory functions depend on accurate dealer records, timely responses to trace requests, and effective federal enforcement—particularly against out-of-state dealers beyond Massachusetts's regulatory authority. In 2024 alone, approximately 64 percent of firearms recovered at crime scenes in the Commonwealth were first sold by dealers outside Massachusetts. *See* ATF, *Firearms Trace Data: Massachusetts—2024* (July 24, 2025).

If the Proposed Rule permits repeatedly noncompliant dealers to remain federally licensed absent proof that they subjectively knew their conduct was unlawful, state and local agencies will have to devote additional personnel and resources to reconstructing incomplete transaction histories, pursuing delayed or unsuccessful traces, reinspecting dealers, bringing independent state enforcement proceedings, and investigating the resulting unlawful transfers and firearms trafficking. ATF itself expects the rule to “considerably” reduce federal revocations and acknowledges that unremedied dealer practices may result in a prohibited person obtaining a firearm without a background check or an FFL delaying a trace needed to pursue a violent criminal. 91 Fed. Reg. at 25,207. Those are direct and foreseeable burdens on state investigative and enforcement systems, yet ATF neither identified nor assessed them before summarily declaring that the rule would have no substantial direct effects on the States.

4. ATF ignored obvious alternatives.

ATF failed to consider numerous obvious alternatives. Most glaringly, ATF failed to consider adopting a definition of “willfully” which has been accepted by all of the courts of appeals to have construed § 923(e). That alternative would plainly satisfy ATF's purported goal of offering “greater clarity” and “predictability” to the public and FFLs. *See* 91 Fed. Reg. at 25,205. Rather than add clarity, the Proposed Rule disrupts the status quo. It would also lead to a patchwork of standards across the country in which judicial interpretations would govern in circuits in which the court of appeals has construed § 923(e)—that is, in most of the country—whereas ATF's new definition would govern in the small handful of circuits which have not considered the issue.

ATF also failed to consider creating a safe harbor for certain actions that it deems “inadvertent” to create regulatory clarity for FFLs (assuming for the sake of argument that there is such a need), while preserving the agency's and courts' longstanding view of willfulness here. That would also be far less disruptive and clearer than the Proposed Rule. ATF also could have drafted a regulation addressing employer liability for employee actions that could be overcome by showing that the employer had trained employees and monitored and enforced compliance with its policies *before* the misconduct occurred.

ATF's analysis of the alternatives that it did consider was also flawed. For example, ATF claims that it considered but rejected the alternative of issuing guidance “due to the differing court interpretations in the absence of an established ATF implementing definition,” and that “[c]ourts would not rely on guidance for such an established definition, ... and internal guidance would

carry no weight” with courts. However, courts also would not rely on ATF’s regulation because under *Loper Bright*, they have the obligation to independently interpret the meaning of statutory terms. Also, ATF does not explain what the “differing court interpretations” are here, given that federal courts of appeals have unanimously rejected ATF’s proposed definition.

Similarly, ATF claims that it rejected the alternative of maintaining the status quo because “the existing interpretation ... has created an unpredictable and inconsistent compliance environment for licensees that could result in unintentional or unwarranted consequences for minor violations of GCA regulations.” 91 Fed. Reg. at 25,207. That reasoning simply restates ATF’s mischaracterization of settled law and practice: the courts of appeals have construed § 923(e) uniformly, and ATF identifies no evidence—not a single revocation or enforcement proceeding—of the “unintentional or unwarranted consequences” it invokes. An unsupported assertion of regulatory uncertainty cannot justify displacing a settled status quo.

5. ATF failed to acknowledge the influence of industry in writing the Proposed Rule.

ATF advanced this rule as part of a package the Department of Justice and ATF publicly described as the product of “industry and expert feedback,” “partnership with the firearms industry,” and “trust and collaboration” with licensees.⁷ Industry organizations have publicly claimed substantial authorship of the package, describing “months” of work with ATF and DOJ and taking credit for specific rule changes.⁸ Where an agency relies on input from regulated parties—including legal theories, factual assertions, or draft language—the substance of that input must appear in the record so the public can respond and a court can assess the basis for the agency’s decision. *See Brennan v. Dickson*, 45 F.4th 48, 66 (D.C. Cir. 2022). ATF should place into this docket all pre- and post-Proposed Rule communications with industry representatives concerning the scope of § 923(e)’s willfulness requirement, and reopen the comment period so the public and the States can respond.

6. ATF failed to consider the effects of the Proposed Rule in conjunction with other, related changes it is making at the same time.

ATF presents its deregulatory package as a set of discrete, technical changes. That presentation is misleading. ATF itself describes the “New Era of Reform” as a package of proposed and final rules to streamline regulations and reduce burdens. In addition to this Proposed Rule, ATF proposes to deregulate FFLs through, among other things, reopening a loophole in the licensing system by revising its “Engaged in the Business” regulations; loosening recordkeeping

⁷ See ATF, New Era of Reform: Modernize (May 12, 2026), <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform/modernize> (DOJ/ATF announcement materials describing the package).

⁸ NSSF, NSSF Welcomes ATF Landmark Rulemaking Package (Apr. 29, 2026) (stating that the package resulted from “months of NSSF working closely with the ATF and DOJ”); American Suppressor Association, ASA Statement on Nomination of Robert Cekada for ATF Director (Nov. 18, 2025), <https://americansuppressorassociation.com/news/asa-statement-on-nomination-of-robert-cekada-for-atf-director> (stating that ASA had “worked closely” with then-Deputy Director Cekada “to ensure law-abiding gun owners have a seat at the table in shaping policy”); Nat’l Rifle Ass’n, ATF Announces New Director, Historic Regulatory Overhaul (Apr. 30, 2026), available at <https://www.nraila.org/articles/20260430/atf-announces-new-director-historic-regulatory-overhaul>; Gun Owners of Am., Here’s What GOA Did for Your Gun Rights This Week (May 2, 2026), available at <https://www.gunowners.org/na040226/>.

requirements; deregulating importation of firearms; narrowing the scope of what qualifies as a straw purchase; and reducing the effectiveness of ATF Form 4473. These proposals do not operate in isolation; they work together to weaken the licensing scheme that Congress created in the GCA to prevent unlawful firearms transactions and to aid law enforcement in tracing firearms used for unlawful purposes. By separating those interlocking changes into different dockets, ATF has created the impression that any particular change is modest and failed to analyze the overall effect that these changes will have on public safety. ATF must consider how this Proposed Rule would be affected by its other proposals and explain why that decision, in context, is rational.

III. The proposed rule would harm States and their residents.

As ATF itself acknowledges, this Proposed Rule will impact public safety. Gun traffickers often rely on FFLs who knowingly or recklessly violate federal firearms laws. These traffickers know which FFLs are unlikely to ask questions about suspicious purchases and which stores may even neglect their basic legal obligations, such as ensuring accuracy on the Form 4473 and running background checks. ATF plays an important role in ensuring that these FFLs bring themselves into compliance or else have their licenses revoked. The States rely upon, and some work in tandem with ATF to do this work, so that there are fewer sources of trafficked guns in their jurisdictions. If federal regulatory enforcement declines, state law enforcement may need to conduct more dealer inspections, trafficking investigations, trace follow-up, interstate coordination, and enforcement.

The States have likewise built their own licensing and enforcement systems on the foundation of federal FFL oversight, and its investigators and prosecutors depend on accurate FFL records and ATF tracing to identify the sources of crime guns.

By heightening the standard for a violation under § 923(e), ATF would create the conditions for more prohibited persons to obtain firearms without a background check and for FFLs not to comply with trace requests. The States urge ATF to withdraw the Proposed Rule, or, at a minimum, postpone any effective date under 5 U.S.C. § 705 pending judicial review.

Sincerely,



Letitia James
Attorney General of New York



Kristin K. Mayes
Attorney General of Arizona



Rob Bonta
Attorney General of California



Philip J. Weiser
Attorney General of Colorado



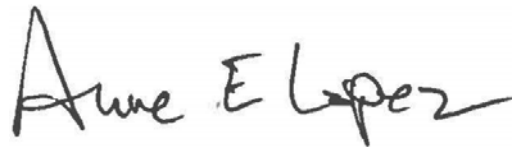
William Tong
Attorney General of Connecticut



Kathleen Jennings
Attorney General of Delaware



Brian L. Schwalb
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Anne E. Lopez
Attorney General of Hawai'i



Kwame Raoul
Attorney General of Illinois



Aaron M. Frey
Attorney General of Maine



Anthony G. Brown
Attorney General of Maryland



Andrea Joy Campbell
Attorney General of Massachusetts



Dana Nessel
Attorney General of Michigan



Keith Ellison
Attorney General of Minnesota



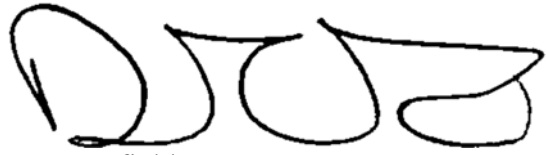
Aaron D. Ford
Attorney General of Nevada



Jennifer Davenport
Attorney General of New Jersey

A stylized, handwritten signature in black ink, consisting of a large 'R' followed by a 'T' and a long horizontal stroke.

Raúl Torrez
Attorney General of New Mexico

A handwritten signature in black ink, featuring a series of connected loops and a long horizontal stroke at the end.

Dan Rayfield
Attorney General of Oregon

A handwritten signature in blue ink, showing a fluid, cursive style with a prominent 'P' and 'N'.

Peter Neronha
Attorney General of Rhode Island

A handwritten signature in blue ink, with the name 'Charity R. Clark' written in a cursive script.

Charity R. Clark
Attorney General of Vermont

A handwritten signature in black ink, featuring a large, bold 'J' and a long horizontal stroke.

Jay Jones
Attorney General of Virginia

A handwritten signature in black ink, with the name 'Nicholas W. Brown' written in a cursive script.

Nicholas W. Brown
Attorney General of Washington



August 5, 2026

Via Federal eRulemaking Portal and U.S. Mail

The Honorable Todd Blanche,
Acting Attorney General of the United States

Robert Cekada,
Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

c/o: ATF Rulemaking Comments
Mail Stop 6N-518, Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Attn: DOJ ATF RIN 1140-AB04

Re: Multistate Comment on Recently Proposed Revisions to Definitions of Mental Health-Related Terms in 18 U.S.C. §§ 922(d)(4) and (g)(4)

Dear Acting Attorney General Todd Blanche and ATF Director Robert Cekada,

The undersigned Attorneys General of the States of New York, Arizona, California, Colorado, Connecticut, Delaware, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, and of the District of Columbia (“the States”) submit this comment letter in response to the Notice of Proposed Rulemaking (“NPRM” or “proposed rule”) by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (“ATF”) in the May 8, 2026 edition of the Federal Register.¹

¹ See DOJ, ATF, *Revising Definitions of “Adjudicated as a Mental Defective” and “Committed to a Mental Institution,”* 91 Fed. Reg. 25,166 (May 8, 2026).

Congress enacted the Gun Control Act of 1968 (“the Gun Control Act” or “the Act”) because “it was concerned with the widespread traffic in firearms and with their general availability to those whose possession thereof was contrary to the public interest.” *Huddleston v. United States*, 415 U.S. 814, 824 (1974). The Act prohibits certain categories of people from possessing or otherwise accessing firearms, including anyone “who has been adjudicated as a mental defective or who has been committed to a mental institution.” 18 U.S.C. § 922(g)(4). It also prohibits selling firearms to such individuals. *Id.* § 922(d)(4). The Act does not define the terms “adjudicated as a mental defective” or “committed to a mental institution.”² In 1997, ATF issued a rule defining the terms; ATF defined “adjudicated as a mental defective” broadly to include a person of “marked subnormal intelligence, or mental illness, incompetency, condition, or disease” who is a “danger” to himself or others or who “lacks the mental capacity to contract or manage his own affairs.”³ Meanwhile, Congress amended the Act to require implementation of a searchable database of records on people who are legally prohibited from possessing firearms, and ATF’s regulation defined who was entered into the database and thereby alerted gun sellers to prohibited persons under Section 922(g)(4).

But ATF is now proposing to dramatically change its regulatory definitions in ways that would likely eviscerate the “adjudicated as a mental defective” prong of the Act. ATF acknowledges the exceptionally high potential costs of its proposed rule—that it would result in increased access to firearms among those adjudicated to pose a danger based on their mental health, and thereby “increase[] public safety risk,” including “potential mass casualty events,” as well as create potential “negative impact[s]” on veterans and others at risk of suicide.⁴ Even so, ATF fails to identify *any* concrete benefits from its proposed change. It principally justifies its proposed rule based on an issue impacting veterans that Congress has already resolved, *see infra* § I, and otherwise asks public commenters to justify ATF’s proposed rule change by providing data on unidentified “other affected persons” who might benefit.⁵

ATF is wrong on the law: its statutory analysis is flawed, and its proposed rule is in excess of its statutory authority and contrary to law because it would undermine Congress’s comprehensive statutory scheme and lead to the very dangers that Congress sought to prevent. Notably, many of the undersigned States have for years operated federal firearms disabilities programs pursuant to Congress’s statutory scheme, and ATF fails to meaningfully consider the costs of upending these programs.⁶ ATF’s proposed rule is also arbitrary and capricious because its decision is unreasonable and not reasonably explained. Finally, ATF failed to engage in the procedures required by law. The States urge ATF to withdraw the NPRM, or, at a minimum, to postpone any effective date under 5 U.S.C. § 705 pending judicial review.

² The States recognize that these terms are outdated and stigmatizing, and we encourage Congress to enact legislation using less offensive terminology. We note that concerns about stigmatization of people suffering from mental health issues can be addressed in part by a federal relief from disabilities process that prioritizes procedural protections and transparency.

³ See 62 Fed. Reg. 34,634–02 (Jun. 27, 1997), codified in 27 C.F.R. § 478.11.

⁴ 91 Fed. Reg. at 25,181-82 & n.42.

⁵ 91 Fed. Reg. at 25,180-81.

⁶ Some of the undersigned States have received outreach from the federal government regarding their federal firearm disabilities programs and stand by the lawfulness, and indeed, the necessity of these programs.

I. Relevant Background

In 1968, Congress enacted the Gun Control Act,⁷ the principal purpose of which—the Supreme Court has recognized—was “to make it possible to keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.” *Barrett v. United States*, 423 U.S. 212, 220-21 (1976) (quoting S. Rep. No. 1501, 90th Cong., 2d Sess., 22 (1968)). The Act enumerated categories of individuals prohibited from possessing firearms, including those “adjudicated as a mental defective or committed to a mental institution,” 18 U.S.C. § 922(g)(4), but it did not define these terms. The Act’s legislative history demonstrates that Congress expressly sought to “maximize the possibility of keeping firearms out of the hands of” people it referred to—in now antiquated language—as “mental incompetents” and “persons with a history of mental disturbances.”⁸

Soon after, Congress amended the Act to mandate reporting of individuals prohibited from possessing firearms into a new searchable database—the National Instant Criminal Background Check System (“NICS”)—that would include federal, state, local, and tribal records.⁹ A few years later, ATF implemented the new reporting requirement in a 1997 final rule, which, for the first time, defined the terms “adjudicated as a mental defective” and “committed to a mental institution.”¹⁰ That rule defined “adjudicated as a mental defective” as “[a] determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease” (1) “[i]s a danger to himself or to others; or” (2) “[l]acks the mental capacity to contract or manage his own affairs.”¹¹ The rule further specified that the term “shall include” (1) “[a] finding of insanity by a court in a criminal case” and (2) “persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice.”¹² ATF’s 1997 final rule also defined the term “committed to a mental institution” as “[a] formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority,” other than admission for purposes of “observation” or “a voluntary admission to a mental institution.”¹³

Congress amended its statutory scheme again in 2007—in response to its findings that NICS was missing “millions” of critical records, which had permitted two recent shooters with “a prior disqualifying mental health commitment” and “a history of mental illness” that was “disqualifying,” respectively, to legally buy the firearms they used to commit their crimes.¹⁴

⁷ Pub. L. No. 90-618, tit. I § 102, 82 Stat. 1213 (1968).

⁸ 114 Cong. Rec. 13,647, 21,784 (1968).

⁹ See Brady Handgun Violence Prevention Act of 1993, Pub. L. No. 103-159, 107 Stat. 1536, (1993), codified in 18 U.S.C. § 922.

¹⁰ See 62 Fed. Reg. 34,634–02 (Jun. 27, 1997), codified in 27 C.F.R. § 478.11.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ NICS Improvement Amendments Act of 2007, Pub. L. No. 110-180 § 2, 121 Stat. 2559-60 (2007). Based on contemporaneous reporting of these well-publicized shootings, one shooter had been hospitalized with paranoid schizophrenia, and the other had been found by a court to be mentally ill and potentially dangerous. See, e.g., Bruce Lambert, *L.I. Man Convicted in Killing Of a Priest and a Parishioner*, N.Y. Times (June 25, 2003) (describing Peter

Congress was clear that the “[m]ental health terms . . . ‘adjudicated as a mental defective’ and ‘committed to a mental institution’ have the same meanings [in the 2007 amendment] as in section 922(g)(4)” of the Gun Control Act.¹⁵ Congress repeatedly used the phrase “mental health” interchangeably with “mental defective.”¹⁶ Some gun rights advocates opposed the Act at the time because they asserted “under these amendments, any veteran who was or had been diagnosed with PTSD and was found to be a ‘danger to himself or others would have his gun rights taken away . . . forever.’”¹⁷

Congress paired enhanced reporting with significant procedural protections designed to ensure that Section 922(g)(4)’s prohibition would be imposed fairly and remain subject to meaningful review. For federal adjudications, Congress required agencies to provide oral and written notice of the consequences of an adverse determination and the availability of relief.¹⁸ Congress also barred federal agencies from reporting adjudications based solely on a medical finding of disability when the individual had no opportunity for a hearing before a court or other lawful authority.¹⁹ And Congress required both federal and qualifying state programs to provide a meaningful avenue for relief from disabilities.²⁰ In addition, Congress created a state-federal system permitting each State to operate a firearm rights restoration program that reviews each case to determine whether an applicant remains dangerous and presents a public safety threat.²¹ If the state program finds that the individual meets the federal standard for rights restoration, the disqualifying event is expunged.²² Thirty-three states, including twelve of the signatories of this letter, have implemented such ATF-approved programs,²³ while other signatories have their own state programs for individualized firearm rights restoration.²⁴

J. Troy who was convicted of murdering a priest and a parishioner at Our Lady of Peace Roman Catholic Church); Ned Potter and David Schoetz, *Va. Tech Killer Ruled Mentally Ill by Court; Let Go After Hospital Visit*, ABC News (April 18, 2007) (describing the findings in court documents for a detention order involving Seung-Hui Cho before his mass shooting on the Virginia Tech campus).

¹⁵ *Id.* § 3, 121 Stat. 2561.

¹⁶ *Id.* §§ 2, 3, tit. I § 101, tit. III § 301, 121 Stat. 2560-63, 2571.

¹⁷ See Cong. Rsch. Serv., *Gun Control, Veterans Benefits, and Mental Incompetency Determinations* R44818 at 8 (Sept. 7, 2021) (quoting Larry Pratt, “Veterans Disarmament Act to Bar Vets from Owning Guns,” PrisonPlanet.com, September 23, 2007, <http://www.prisonplanet.com/articles/september2007/230907Disarmament.htm>).

¹⁸ Pub. L. No. 110-180, tit. I § 102, 121 Stat. 2564.

¹⁹ *Id.* §§ 101, 105, 121 Stat. 2559, 2562-63, codified in 34 U.S.C. § 40915(a).

²⁰ *Id.* §§ 103, 105, 301, 121 Stat. 2567-71. Individuals can submit evidence and secure review of an adverse determination by an independent decisionmaker. See ATF, *Certification of Qualifying State Relief from Disabilities Program*, Form 3210.12, items 4-7.

²¹ See 34 U.S.C. § 40915(a)(2).

²² *Id.* § 40915(b).

²³ See ATF, NICS Improvement Amendments Act of 2007: List of Qualified State Relief of Disability Programs, available at <https://www.atf.gov/firearms/docs/guide/nicsactlist7-7-210pdf/download>.

²⁴ See, e.g., Mich. Comp. Laws § 28.424; Wash. Rev. Code §§ 9.41.041, 9.41.047. An alternative individualized process is available pursuant to 18 U.S.C. § 925(c). In response to the Justice Department’s recent proposed rulemaking regarding the federal restoration program, see DOJ, *Application for Relief from Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms*, 90 Fed. Reg. 34,394 (July 22, 2025), several States submitted a letter outlining their support of the intent of the initiative, as well as their belief that DOJ should add additional provisions to ensure transparency in its decision-making process, and to ensure that the public receives notice of each adjudication “together with the reasons therefor,” 18 U.S.C. § 925(c). See States’ Response to Dkt. No. OAG191 dated Oct. 20, 2025.

Meanwhile, for decades, when the Department of Veterans Affairs (“DVA”) determined a beneficiary to be “mentally incompetent” under its regulations and appointed a fiduciary, DVA found the veteran was thereby “adjudicated as a mentally defective” within the meaning of Section 922(g)(4). The DVA thus shared these records with NICS, resulting in hundreds of thousands of veterans being prohibited from buying firearms.²⁵ However, Congress in recent years addressed this issue—as ATF acknowledges—by prohibiting the use of appropriated funds for DVA referrals to NICS based solely on DVA incompetency proceedings, absent a finding that the veteran is also a danger to themselves or others.²⁶ Congress has also mandated additional procedural protections as part of the DVA competency process.²⁷

II. ATF’s Proposed New Definitions

ATF justifies its proposed definitions as (1) necessary to ensure that veterans and unidentified “others” are not deprived of their Second Amendment rights, and (2) legally appropriate because the current regulations are broader than the “original public meaning of the terms,” and because ATF believes there is too much overlap between the “adjudicated as a mental defective” and “committed to a mental institution” prongs.²⁸ ATF recognizes that its proposed rule would result in fewer individuals being reported to NICS under the “adjudicated as a mental defective” prong. While ATF identifies no policy concerns with the “committed to a mental institution” prong, it nonetheless proposes significant changes to that prong.

A) “Adjudicated as a Mental Defective”

As detailed above, the 1997 definition reaches individuals adjudicated either to be dangerous or to lack the mental capacity to contract or manage their own affairs and expressly includes criminal court insanity findings and the military-justice findings noted above. *See supra* § I.

ATF’s new definition would substantially narrow “adjudicated as a mental defective” as follows:

- 1) First, an “adjudication” requires numerous procedural protections, specifically—“a court, board, commission, or other lawful authority” must provide the person with:
 - “[a]n in-person or remote hearing before an unbiased adjudicator;”
 - “[a]n opportunity to hear opposing evidence, to present evidence, and to confront adverse witnesses;”
 - “[p]ermission to be represented by counsel;”
 - “[a]n appointed counsel or guardian ad litem when there are reasonable grounds to believe that individuals lack sufficient mental competency to represent themselves or act in their own defense;”
 - “[a]dequate notice of the hearing;” *and*

²⁵ 91 Fed. Reg. at 25,170-74.

²⁶ *See id.* at 25,169 n.10.

²⁷ *See* 21st Century Cures Act, Pub. L. No. 114-255, 130 Stat. 1307 (2016), codified in 38 U.S.C. §5501A; *see also* 38 C.F.R. §§ 3.353(c), (d), & (e), 3.103(a)-(b).

²⁸ *See* 91 Fed. Reg. at 25,168-74.

- “[i]n a civil proceeding, a burden of proof based on at least clear and convincing evidence.”
- 2) Second, where an “adjudication” has taken place, an individual has been “adjudicated as a mental defective” only if one of the following is true:
- A court or the convening authority in a court martial has found the person “to be incompetent to stand trial based on a mental disease or defect where there is no reasonable possibility of restoring competence”; *or*
 - A court, board, commission, or other lawful authority has appointed the person a guardian, *and*:
 - the guardian was appointed “because of an intellectual disability”^{**} or “mental illness”; *or*
 - the lawful authority found the person to “have a permanent physical condition, such as dementia, provided the individual[] ha[s] reached the functional capability equivalent to that of a person with an intellectual disability^{**}.”

^{**}ATF defines an “intellectual disability” to exist only if a person:

- has “a full-scale IQ score of 45 or below”; *or*
- has “a full-scale IQ score of less than 69 *and* has limitations in multiple adaptive functioning domains such that the person is incapable of living independently”; *or*
- has “cognitive and functional deficits that would be equal to or greater than” those described above, as determined by an adjudicator.²⁹

ATF’s proposed definition further clarifies that an intellectual disability does not exist “solely because an individual has had a temporary guardian appointed due to a transient physical disability or because an individual has had a fiduciary appointed solely to assist with managing their financial affairs.”³⁰

ATF’s proposed definition is muddled and confusing, but three points seem clear. First, ATF would remove any consideration of dangerousness from the definition of “adjudicated as a mental defective.”³¹ Second, “mental illness” falls within ATF’s definition only if the person has been appointed a guardian because of the mental illness. Third, the person’s lack of mental capacity to engage in life activities is relevant only insofar as such condition is permanent (whether because of a “permanent physical condition” or an “intellectual disability”) and is extremely severe. Indeed, ATF has raised the bar for a qualifying intellectual disability so high that a person is presumptively within ATF’s definition *only if* they have an IQ of 45 or lower, corresponding to a mental age of 3- to 9-years old. For people with an IQ between 46 and 68, corresponding to a mental age of 9- to 12-years-old, the person must also have “limitations in multiple adaptive functioning domains” such that they are incapable of living independently.³² And people with an IQ higher than 69 are

²⁹ 91 Fed. Reg. at 25,186-87.

³⁰ *Id.* at 25,177.

³¹ *Id.* at 25,174. ATF would move consideration of dangerousness to the “committed to a mental institution” prong.

³² *Id.* at 25,176.

not encompassed within ATF's definition at all—regardless of whether they have been found to pose a risk of dangerousness to themselves or others, have been diagnosed with a cognitive impairment resulting in a propensity to violence, or have had a guardian appointed because they are incapable of living independently.

B) “Committed to a Mental Institution”

Under the 1997 definition, “committed to a mental institution” is defined as “[a] formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority.” 27 C.F.R. § 478.11. The definition “includes a commitment to a mental institution involuntarily.” *Id.* It also includes “commitment for mental defectiveness or mental illness” or “for other reasons, such as for drug use.” *Id.* The 1997 definition “does not include a person in a mental institution for observation or a voluntary admission to a mental institution.” *Id.*

ATF's proposed definition would move the word “involuntary” into the definition, to read: “A formal *and involuntary* commitment of a person to a mental institution by a court, board, commission, or other lawful authority.”³³ The definition would separate “included types” into a new paragraph and rephrase them to read: “The term includes³⁴ the following types of commitments to a mental institution:

- (1) Commitments resulting from determinations that individuals are a danger to themselves or others based upon mental disease or defect; [and]
- (2) Commitments resulting from other reasons, such as for drug use[.]”³⁵

ATF would add new “included types” of commitments to the definition, specifically: criminal court proceedings that result in a verdict of insanity or “a determination that a person is incompetent to stand trial . . . if the basis for that determination is a mental disease or defect,” and military proceedings that result in a verdict of “not guilty by reason of lack of mental responsibility” under the Uniform Code of Military Justice (UCMJ) art. 50a, or in a finding that a person is “incompetent to stand trial” under UCMJ art. 72b.³⁶ ATF states that these new “included types” are currently encompassed within the “adjudicated as a mental defective” prong but are more appropriately part of the “commitment to a mental institution” prong.³⁷ Finally, ATF maintains the clarification that “not included” in the definition are people in a mental institution for observation or for a voluntary admission.³⁸

The combined effect of these changes is that a person found not guilty by reason of insanity, but never formally and involuntarily committed, would fall outside both definitions—and outside § 922(g)(4) altogether.

³³ 91 Fed. Reg. at 25,187 (emphasis added). By mandating involuntariness, the proposed rule could invite challenges to commitments entered on a respondent's assent or stipulation following a judicial finding of dangerousness.

³⁴ While the States oppose the NPRM in its entirety, if ATF declines to withdraw its proposed rule, it should at a minimum clearly state that the list “includes, but is not limited to, the following types of commitments.”

³⁵ 91 Fed. Reg. at 25,187.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

III. ATF's NPRM Is Contrary to Law and in Excess of its Authority

ATF's proposed definition of "adjudicated as a mental defective" cannot be reconciled with the comprehensive statutory scheme Congress created with the Gun Control Act and subsequent amendments. Because ATF's interpretation of the "adjudicated as a mental defective" prong is inconsistent with and undermines the function and purpose of Congress's comprehensive statutory scheme, it is contrary to law and in excess of authority in violation of the Administrative Procedure Act ("APA"). *See* 5 U.S.C. § 706(2)(A), (C); *see also City of Arlington v. FCC*, 569 U.S. 290, 297 (2013) (an executive agency lacks authority to override federal statutes).

A) ATF Misconstrues Federal Law

ATF misconstrues federal law when it proposes to limit "adjudicated as a mental defective" to only those people who receive specific procedural protections and suffer from extraordinarily severe and permanent intellectual defects, demonstrated by an IQ associated with a mental age of 3- to 9-years-old, or evidence that they are incapable of living independently. ATF's interpretation of the statute is not the best, or even a plausible, reading of the Act and its amendments. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 399 (2024) (courts must determine the "best" statutory interpretation and agency interpretations are not entitled to deference).

At the threshold, ATF errs by dismissing relevant Supreme Court precedent as "off-topic"³⁹ and irrelevant to its statutory analysis. *See United States v. Gould*, 163 F.4th 795, 799 (4th Cir. 2026), *cert. denied*, No. 25-7330, 2026 WL 1780101 (U.S. June 22, 2026) (discussing the weight federal courts give to Supreme Court *dicta* in this context). A line of Supreme Court cases has found—including close in time to the Act's enactment—that Congress's "manifest purpose" was "broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous." *Barrett*, 423 U.S. at 216, 218 (relying on Congress's purpose in its holding); *Huddleston*, 415 U.S. at 824 (reviewing legislative history); *see also Bondi v. VanDerStok*, 604 U.S. 458, 462 (2025) (Congress adopted the Act "[s]hortly after the assassinations of Senator Robert F. Kennedy and Dr. Martin Luther King, Jr." when it concluded existing gun control measures were insufficient).

Moreover, ATF violates basic rules of statutory interpretation when it fails to consider the broader statutory context, including successive amendments to the Gun Control Act that are part of the comprehensive statutory scheme. *See Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 455 (2022) (to discern the "ordinary, contemporary, common meaning" of a statute, the words "must be read and interpreted in their context, not in isolation" (cleaned up)). Both the language and structure of that scheme support a broader interpretation of "adjudicated as a mental defective" than what ATF has proposed. For example, in one of its amendments, Congress expressly stated that it intended "adjudicated as a mental defective" to have the "same meaning" as in the original Act, and it used the phrase interchangeably with the term "adjudication related to the mental health of a person."⁴⁰ Congress also explained in an amendment that improvements to NICS reporting were necessary because people with "disqualifying" mental illnesses—specifically, paranoid schizophrenia and

³⁹ *See* 91 Fed. Reg. at 25,171.

⁴⁰ Pub. L. No. 110-180, tit. I § 101, 121 Stat. 2562; *see supra* § I.

depression / anxiety—had recently committed mass murders using legally purchased firearms.⁴¹ In addition, as part of its comprehensive statutory scheme, Congress created procedures through which people who recover from impairing mental health conditions may have their gun rights and privileges restored⁴²—provisions which make sense *only if* Congress intended the Act’s prohibitions to reach individuals with temporary, curable mental health conditions. Finally, as many courts have observed, the legislative history of the Act demonstrates that Congress sought to broadly prevent people at risk of harming themselves or others because of mental illness from accessing firearms. *See, e.g., U.S. v. Chamberlain*, 159 F.3d 656, 660 (1st Cir. 1998) (reviewing legislative history). In short, the statutory structure, language, and legislative history make clear what the Supreme Court found: Congress intended to broadly prohibit people adjudicated to be a danger to themselves or others, or cognitively impaired to contract or manage their own affairs, from possessing firearms in order to keep the public safe. *See U.S. v. Granderson*, 511 U.S. 39, 47 (1994) (courts avoid textual interpretations that would lead to an absurd result).

While ATF acknowledges that the term “adjudicated as a mental defective” is not susceptible to a single interpretation based on contemporaneous sources,⁴³ it ignores the best evidence of the text’s meaning—Congress’s own contemporaneous usage of the term “mental defective.” After its passage in 1968, the Gun Control Act was codified in Title 18, Part I, of the U.S. Code. In the same Title, another Part relating to incarcerated individuals included an entire chapter titled “Mental Defectives” that broadly covered—in the language of the time—incarcerated individuals “alleged to be insane or of unsound mind or otherwise defective.”⁴⁴ In that chapter, Congress used the terms “mental defect” and “mental defective” interchangeably—as catch-all phrases to describe a broad range of mental health conditions.⁴⁵ The Immigration Act of the time period also used “mental defective” in a comparably broad way.⁴⁶ These contemporaneous Congressional usages of the term support a broader definition than what ATF has proposed.

ATF’s arguments to the contrary—primarily relying upon international law and the DSM-I, as well as a few state statutes⁴⁷—do not require a different result. First, ATF fails to consider state statutes that do not support its narrow interpretation.⁴⁸ Second, some of ATF’s analysis relies

⁴¹ Pub. L. No. 110-180, § 2, 121 Stat. 2560; *see supra* § I & n.14.

⁴² Pub. L. No. 110-180 § 101, 103, 105, 121 Stat. 2563-64, 2567-70; *see supra* § I.

⁴³ *See* 91 Fed. Reg. at 25,174.

⁴⁴ Former 18 U.S.C. §§ 4241–4248 (1964) (ch. 313, “Mental Defectives”), amended and recodified by Pub. L. No. 98-473, tit. II, ch. IV, 98 Stat. 2057 (1984).

⁴⁵ *Id.*

⁴⁶ *See* ch. 374, 22 Stat. 124; *United States v. Hoy*, 330 U.S. 724, 729 (1947) (observing Congress in amending immigration statutes “left the barriers in effect which barred physical and mental defectives.”); *U.S. ex rel. Johnson v. Shaughnessy*, 336 US 806 (1949) (considering challenge to non-citizen’s exclusion as “mental defective” where basis was alleged hallucinations and prior bout of insanity); *see also* S. Rep. No. 1515, 81st Cong., 2d Sess., p. 194-95, 340-41.

⁴⁷ *See* 91 Fed. Reg. at 25,169-74.

⁴⁸ *See, e.g.,* Laws of New York, 1965, Art. 130.00 (“‘Mentally defective’ means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct” and distinguishing term from “mentally incapacitated” as a result of a narcotic or intoxicating substance); Code of Alabama 1975, Section 13A-6-60(5) (“Mental defective” “means that a person suffers from a mental disease or defect which renders him incapable

on definitions for “mental deficiency,” which the agency assumes is equivalent to “mental defective.”⁴⁹ But Congress chose the term “mental defective,” and we must assume Congress meant what it said. Third, while ATF implies that *Heller* requires additional process before deprivation of gun rights, the Supreme Court made clear that nothing in *Heller* “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by . . . the mentally ill.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). The Supreme Court, in fact, recently confirmed: “Since the founding, our Nation’s firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms,” and “[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” *United States v. Rahimi*, 602 U.S. 680, 690, 702 (2024). Finally, ATF’s reliance on *United States v. Hansel*, 474 F.2d 1120, 1122 (8th Cir. 1973), is misplaced. That case involved evidence at trial demonstrating that the defendant was “found not to have a serious mental disorder” and released without a commitment. *Id.* *Hansel*’s foray into original meaning is *dicta*, and it relied in substantial part on early medical definitions of a different term. *See id.* at 1123-24.

B) ATF’s Definition Would Undermine Congress’s Comprehensive Statutory Scheme

Not only is ATF’s statutory interpretation flawed, but its proposed rule would undermine Congress’s comprehensive statutory scheme in at least three distinct ways—each of which exceeds ATF’s authority. *See La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986) (an executive agency “has no power to act . . . unless and until Congress confers power upon it”).

First, with the Act and its amendments, Congress expressly sought to keep guns out of the hands of potentially dangerous people, and it identified mass shooters (one hospitalized with paranoid schizophrenia, and the other found to be a danger after being diagnosed depression) as examples of those who are “ineligible” to possess firearms. *See supra* § I. ATF’s proposal to limit the definition to purportedly “permanent” conditions defined by particular IQ and functional metrics would omit individuals that Congress deemed to pose a potential danger because of mental illness. It is notable that ATF proposes eliminating consideration of dangerousness as well as a finding of insanity in a criminal case from the “adjudicated as a mental defective” definition. The proposed rule would prohibit those individuals only if they are involuntarily committed to a mental institution. *See supra* § II. ATF proposes these changes even though dangerousness has always been Congress’s primary concern. *See supra* § I. Indeed, ATF implicitly recognizes that its proposed definition may create a coverage gap, requesting public comments on “whether there are individuals who are found not guilty by reason of insanity or found in a proceeding to be a danger to themselves or others but are not committed to a mental institution[.]”⁵⁰

Second, Congress’s comprehensive statutory scheme is predicated on categorical prohibitions accompanied by procedures permitting gun rights to be restored for individuals who

of appraising the nature of his conduct”); *see also* Dep’t of Treasury, 29 Fed. Reg. 14,213 (Oct. 16, 1964), codified in 26 C.F.R. Part 1 (referencing “mentally defective” person who “has suicidal or other dangerous tendencies”).

⁴⁹ *See* 91 Fed. Reg. at 25,172-73.

⁵⁰ 91 Fed. Reg. at 25,174.

show that they are no longer at risk of harming themselves or others. *See* 18 U.S.C. § 925(c).⁵¹ As ATF implicitly acknowledges, its new definition would substantially change the operation of Congress’s scheme by categorically excluding only a narrow group of people with purportedly “permanent” conditions.⁵² This would render Congress’s rights-restoration processes meaningless because persons with permanent conditions would presumably not be able to show a change in condition sufficient to lift their restrictions.

Third, in its amendments to the Act, Congress made clear that it wanted to increase reporting of state records, in part by incentivizing States to digitize their records and automate sharing with NICS.⁵³ Congress has legislated in this domain twice, each time in direct response to a failure to keep firearms from dangerous people: the NICS Improvement Amendments Act of 2007 after the Virginia Tech and Our Lady of Peace mass shootings,⁵⁴ and the Fix NICS Act of 2018 after a comparable reporting failure.⁵⁵ Each amendment directs federal and state authorities to expand the submission and verify the accuracy of these records, and each rests on the premise that ATF now abandons: the adjudication is prohibiting and must be reported.⁵⁶ But ATF’s complicated new definition would likely make reporting to NICS much more cumbersome and delayed—to the extent that States and others are required to assess whether any particular record meets ATF’s specific procedural and substantive requirements.

IV. ATF’s NPRM is Arbitrary and Capricious

An agency action is arbitrary or capricious where it is not “reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021); *see* 5 U.S.C. § 706(2)(A). An agency must provide “a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted). An action is also arbitrary and capricious if the agency “failed to consider . . . important aspect[s] of the problem” before it. *Dep’t of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1, 25 & 33 (2020) (quoting *State Farm*, 463 U.S. at 43). In addition, when an agency “rescinds a prior policy,” the agency must, at minimum, “consider the ‘alternatives’ that are within the ambit of the existing policy,” “assess whether there were reliance interests,” and “weigh any such interests against competing policy concerns.” *Regents*, 591 U.S. at 30. When the new policy implicates “serious reliance interests,” the agency must also provide “a more detailed justification than would suffice

⁵¹ *See also* Pub. L. No. 110-180, §§ 101(c)(2), 105, 121 Stat. 2559 (2008).

⁵² *See* 91 Fed. Reg. at 25,182 (Currently prohibited persons “would no longer be prohibited from possessing firearms under the proposed rule unless they were involuntarily committed, found permanently incompetent to stand trial, or had a guardian appointed due to a severe permanent mental illness or ‘intellectual disability’ as defined by the proposed rule.”).

⁵³ *See, e.g.*, Pub. L. No. 110-180, tit. III § 301, 121 Stat. 2571 (2008).

⁵⁴ *See supra* n.14.

⁵⁵ The Fix NICS Act followed the Sutherland Springs shooting, in which the Air Force’s failure to report the perpetrator’s disqualifying domestic-violence court-martial conviction allowed him to pass a NICS background check and purchase a firearm.

⁵⁶ *See, e.g.*, Fix NICS Act of 2018, Pub. L. No. 115-141, div. S, tit. VI, 132 Stat. 348 (2018) (directing federal and state implementation plans to “ensure maximum coordination and automation of the reporting or making available of appropriate records to the [NICS] . . . and the verification of the accuracy of those records”).

for a new policy created on a blank slate.” *FCC v. Fox Tele. Stations, Inc.*, 556 U.S. 502, 515 (2009). Because ATF failed to comply with these procedural requirements, its NPRM is arbitrary and capricious in violation of the APA. *See* 5 U.S.C. § 706(2)(A).

A) Failed to Connect Facts Found to Choices Made

First, ATF failed to connect the facts found with the choices made. Specifically, while ATF’s proposed rule reflects a set of choices the agency made, the sheer number of basic questions ATF asks in the NPRM strongly suggests that the agency has not done the basic fact-gathering necessary for reasoned decision making.⁵⁷ For example, ATF acknowledges that it lacks basic information about which groups of people are covered by the 1997 definition but would not be covered by the proposed rule, or how many of those people pose a danger to the public.⁵⁸ ATF also lacks information about how its proposed rule will impact the States—withstanding that more than 99 percent of the records provided to NICS in the “adjudicated as a mental defective or committed to a mental institution” category were provided by States.⁵⁹

Even to the extent that ATF identifies facts it has found, it fails to connect those facts with the choices it has made. As just one example, ATF’s decision to include IQ score ranges in its proposed definition finds no support in the sources contemporaneous to the enactment of the Act that ATF claims are the basis for its proposal.⁶⁰ ATF’s addition of a host of specific procedural requirements, *see supra* § II, similarly finds no support in the 1960s-era sources it relies upon.

B) Failed to Reasonably Explain its Actions

ATF’s proposed rule amounts to a solution in search of a problem. ATF spills considerable ink discussing its concerns about the disarming of veterans, and the VA mental competence procedures it deems inadequate.⁶¹ But as the agency acknowledges, Congress has already addressed ATF’s concern about veteran disarmament with the appropriations rider,⁶² and Congress has also addressed ATF’s concern related to Social Security beneficiaries.⁶³ Congress has also added due process protections to address the concerns ATF raises. *See supra* § I. The agency’s sole explanation for its proposed rule is that the changes would “ensure that veterans” and unidentified “other affected persons” who form a “specific segment of the public” can retain their Second Amendment rights when a fiduciary or limited guardian is appointed to manage their financial or

⁵⁷ *See, e.g.*, 91 Fed. Reg. at 25,182-83.

⁵⁸ *Id.* at 25,181.

⁵⁹ Of 8,213,415 NICS Indices entries in this category, 8,133,151—99 percent—came from States. *See* FBI Criminal Justice Information Services Division, National Instant Criminal Background Check System (NICS) Active Entries in the NICS Indices as of December 31, 2025, <https://www.fbi.gov/file-repository/cjis/active-entries-in-the-nics-indices.pdf>.

⁶⁰ *Compare* 91 Fed. Reg. at 25,186-87, *with id.* at 25,169-74.

⁶¹ *See* 91 Fed. Reg. at 25,169-70, 25,177, 25,179-83, 25,185.

⁶² *Id.* at 25,169 n.10. As ATF acknowledges, the VA has determined that incompetency determinations under 38 U.S.C. § 5502 do not meet this standard and has “directed the removal” of such records from NICS when they do not have an independent qualifying basis. *Id.* at 25,170 n.19.

⁶³ As ATF discusses, Congress disapproved by joint resolution pursuant to the Congressional Review Act of the Social Security Administration’s final rule setting forth the procedures for SSA reporting to NICS of beneficiaries with certain “mental impairments.” *Id.* at 25,171 (citing Pub. L. No. 115-8, 131 Stat. 15 (2017)). As such, SSA may not reissue the rule in “substantially the same form” unless it is specifically authorized by a subsequent law. 5 U.S.C. § 801(b)(2).

personal affairs.”⁶⁴ But ATF fails to identify *any* group actually suffering harm under the status quo. Nor does it identify any data on the number of individuals other than veterans who have *ever* been harmed by the 1997 definition.⁶⁵ The only remotely concrete problem ATF has identified is *if* a future Congress allows the appropriations rider to expire and eliminates the additional procedural requirements for veterans.⁶⁶ But Congress chose this method of addressing its concern and ATF lacks the authority to override Congressional judgment. In any event, ATF’s proposed definitions are *far* more narrowing than the impact of Congress’s rider. *See supra* § II.

In addition, ATF’s “core” and “periphery” interpretation of the contemporaneous definitions⁶⁷ is flawed because it assumes what ATF seeks to prove. Upon acknowledging some inconsistency in contemporaneous definitions of the term,⁶⁸ ATF assumes that only the narrowest meaning that cuts across all sources—i.e., the “core”—reflects the original understanding of the term.⁶⁹ ATF draws this conclusion even as it fails to consider Congress’s own use of the phrase “mental defective” in the same Title of the U.S. Code and other federal law. *See supra* § 3(A).

ATF’s reliance on IQ scores also finds no basis in Congress’s legislative enactments, let alone in the broader record. ATF appears to have extrapolated from the DSM-I’s discussion of a different medical phrase to conclude that anyone with an IQ of more than 45 should presumptively have access to firearms. *See supra* § II. Nor does ATF provide any explanation for requiring the “precise criteria” outlined in its regulation or even how it came up with this list.⁷⁰ It does not even explain the meaning of the new terms it introduces, such as “multiple adaptive functioning domains.”⁷¹ And even ATF acknowledges that the proposed rule “runs the risk of overcorrecting” any concerns the agency has identified.⁷²

ATF’s proposed changes to the “commitment to a mental institution” definition are similarly arbitrary. ATF’s sole explanation for its action is that the agency is “unsure” that the current regulation “correctly demarcated the difference between ‘adjudicated as a mental defective’ and ‘committed to a mental institution.’”⁷³ But ATF is fixing a problem entirely of its own making: the agency’s proposed narrowing definition is—by design—eliminating that category of people covered by the “adjudicated as a mental defective” prong who are not “committed to a mental institution.” *See supra* § II. And ATF acknowledges that its new “commitment” definition does not actually solve the overlap problem.⁷⁴

⁶⁴ 91 Fed. Reg. at 25,180.

⁶⁵ *See id.* (conceding ATF “does not have a valid set of data” and “welcomes public comment . . . to further estimate the affected population of individuals, veterans or otherwise”).

⁶⁶ *Id.* at 25,169.

⁶⁷ 91 Fed. Reg. at 25,173.

⁶⁸ *See* 91 Fed. Reg. at 25,174.

⁶⁹ *See id.* at 25,172-74.

⁷⁰ 91 Fed. Reg. at 25,187.

⁷¹ *See id.* at 25,176.

⁷² *Id.* at 25,182.

⁷³ *Id.* at 25,174.

⁷⁴ *See* 91 Fed. Reg. at 25,168 n.8.

C) Failed to Consider Important Aspects of the Problem

ATF's changes to the "adjudicated as a mental defective" definition undermine the purposes and structure of the comprehensive statutory scheme, including Congress's purpose "to ensure maximum coordination and automation of the reporting or making available of appropriate records to [NICS] . . . and the verification of the accuracy of those records."⁷⁵ And, ATF recognizes that the costs of its approach will be "an increase in public safety risk" due to "subset[s] of potentially dangerous persons who would no longer necessarily be prohibited possessors," and with the potential for "mass casualty events."⁷⁶ It also recognizes that 70 percent of veteran suicides rely on a firearm.⁷⁷ But ATF does not engage in *any* meaningful assessment of the costs of its approach, including how many potentially dangerous people may gain access to firearms, or the costs of the harm they may cause. In marked contrast, ATF estimates the precise costs to individuals who obtain review of disability under the state-federal system Congress created.⁷⁸ ATF fails to consider, however, that the actuarial value of a single life lost as a result of increased gun violence would vastly outweigh all the "leisure time" costs the agency has calculated.⁷⁹ ATF also fails to display awareness that by narrowing the definitions, it departs from Congress's long-standing system of individualized adjudications of dangerousness under 34 U.S.C. § 40915. *See Food and Drug Admin. v. Wages & White Lion Investments*, 604 U.S. 542, 566 (2025) (agency must display awareness of changing position).

Finally, ATF errs by analyzing its proposed rule in isolation. The NPRM is one of an interlocking set of proposals in ATF's announced regulatory-reform package, several of which independently weaken the records, verification, and reporting systems on which NICS and state law enforcement depend. Announcing the rules as a package while analyzing their costs and public-safety effects one rule at a time impermissibly segments the analysis: the APA requires ATF to consider the cumulative effect of its interlocking rules, and its failure to do so independently renders the proposal arbitrary. *See State Farm*, 463 U.S. at 43.

D) Failed to Consider Serious Reliance Costs and Harms to States

Even as the States contribute the *vast* majority of records to NICS in the "adjudicated as a mental defective or committed to a mental institution" definition—millions of records in total,⁸⁰ ATF simply dismisses any costs to the States as a "minimal" "sunk cost" or says the agency lacks information about costs.⁸¹ But States have relied on Congress's comprehensive statutory scheme and the reporting incentives Congress created to develop their current NICS reporting structures. ATF's complicated new definition introducing new, specific procedural and substantive requirements, *see supra* § II, threatens to wholly upend the often-automatic reporting structures

⁷⁵ *See* Fix NICS Act, Pub. L. No. 115-141, div. S., title VI, 132 Stat. 348 (2018).

⁷⁶ 91 Fed. Reg. at 25,181-82.

⁷⁷ *Id.* at 25,182 n.40.

⁷⁸ *Id.* at 25,181 (calculating monetary cost of lost "leisure time").

⁷⁹ *See* HHS Standard Values for Regulatory Analysis, 2026 (estimating the value of a statistical life at \$14.1 million), available at <https://aspe.hhs.gov/sites/default/files/documents/2d83af5823915d81871334ee08ad03d9/Standard-RIA-Values-2026.pdf>.

⁸⁰ *See supra* n.59.

⁸¹ 91 Fed. Reg. at 25,182.

States have put in place, requiring burdensome and time intensive reviews of records that will cost States and introduce the very NICS reporting delays that Congress sought to avoid, *see supra* § III(B) & (C). Moreover, ATF’s cavalier observation that States “may need to review” their existing records,⁸² utterly fails to recognize the costs to the States of needing to review potentially millions of existing records.⁸³ To do this, States—particularly those that act as a “point of contact” state as defined in 28 C.F.R. § 25.2—would likely have to seek out evidence in a massive number of cases to verify the records in the NICS databases, even as confidentiality protections for mental health records may prevent access. Indeed, in many States, records transmitted to NICS contain only nonclinical identifying information; underlying clinical documents are confidential or impounded by court order; and historical orders often contain no IQ, adaptive-functioning, or burden-of-proof findings at all—so it may not be possible to validate existing state entries against ATF’s new criteria, no matter the resources expended. And because the NPRM appears to provide no transition or savings clause for determinations predating the rule, the narrowed definition would govern at the next background check and potentially reach decades of historical records.⁸⁴ The result: ATF’s proposed rule would shift the burden to States to prove that someone is in fact covered by ATF’s narrowed definitions. This is substantively and procedurally arbitrary.

Finally, ATF’s proposed rule will—as ATF implicitly concedes—lead to more potentially dangerous people having access to firearms and as a result, more preventable deaths and violence. By narrowing the adjudications and commitments that trigger the federal prohibition, ATF’s proposed rule would allow more people, including those found to pose a danger to themselves or others, to pass a background check. The foreseeable result is not merely increased firearm access, but more preventable suicides and other violence. Firearm access is one of the most reliable predictors of suicide risk.⁸⁵ Nationwide, 6 out of every 10 gun deaths is a suicide, and 73 Americans die by firearms suicide every day.⁸⁶ This risk is especially acute among veterans, as ATF itself has recognized.⁸⁷

The NPRM also asserts, without support, that “this proposed rule would not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government.”⁸⁸ ATF also fails to engage in the federalism consultation that Executive Order 13132 requires for rules with substantial direct effects on the States—even as the proposed rule would increase the

⁸² 91 Fed. Reg. at 25,182.

⁸³ *See supra* n.59. The FBI’s national data relating to Section 922(g)(4) NICS entries does not distinguish between individuals “adjudicated as a mental defective or committed to a mental institution,” and thus it is not clear how many state records are specific to individuals “adjudicated as a mental defective.” *See* FBI Criminal Justice Information Services Division, National Instant Criminal Background Check System (NICS) Active Entries in the NICS Indices as of December 31, 2025, <https://www.fbi.gov/file-repository/cjis/active-entries-in-the-nics-indices.pdf>.

⁸⁴ Because the records transmitted to NICS are identifier-level abstracts that never documented paragraph (c)’s procedural elements, recertification would likely require manual retrieval of the underlying court files.

⁸⁵ Paige Tetens, *Those Who Serve: Addressing Firearm Suicide among Military Veterans*, Everytown (last updated June 12, 2026), available at <https://everytownresearch.org/report/those-who-serve/>.

⁸⁶ Issues: Suicide, Everytown, available at <https://everytownresearch.org/issue/suicide/>.

⁸⁷ *See Definition of “Engaged in the Business” as a Dealer in Firearms*, 89 Fed. Reg. 28,968, 29,083 & n.285 (Apr. 19, 2024) (citing DVA data showing that, in 2021, an average of 17.5 veterans died by suicide each day and that firearms were involved in 73.4 percent of suicide deaths among veteran men and 51.7 percent among veteran women).

⁸⁸ 91 Fed. Reg. at 25,184; *but see supra* §§ I, III(A) & (B).

number of firearms in the hands of people who pose a danger to themselves or others. State law cannot fill the gap: even where such individuals are disqualified from an in-state license, removal from Section 922's prohibited categories leaves a person free to buy some firearms in other States. And these harms would be irreparable: if currently prohibited individuals are able to pass background checks and purchase firearms, subsequent judicial decisions cannot undo the resulting harms.

E) Failed to Meaningfully Consider Reasonable Alternatives

ATF dismisses the reasonable alternative of taking no action because of what it refers to as the “qualitative burden on the public” of the “unnecessarily broad” definition.⁸⁹ But ATF’s policy concerns were specific to veterans and Social Security beneficiaries and have already been addressed by Congress. *See supra* § I. ATF fails to explain why any further action is needed. ATF also dismisses the reasonable alternative of limiting any rule change to veterans because of the agency’s unsupported “concern[]” that there *may* be “other competency procedures” that have not been addressed by Congress.⁹⁰ ATF’s reliance on unidentified “others” and metaphysical “qualitative burden[s]” to justify a significant regulatory change is substantively unreasonable.

V. ATF Failed to Observe Procedure Required By Law

ATF’s proposal is also defective for failing to perform required analysis. Under the Paperwork Reduction Act, an agency must identify and account for information-collection burdens, 44 U.S.C. §§ 3501–3520, but ATF fails to analyze the burdens imposed on States to retrieve and review decades of underlying court files to determine which existing records satisfy the new procedural and substantive criteria. In addition, ATF’s failure to perform the required cost-benefit assessment and the federalism consultation, *see supra* § IV(D), confirm that ATF did not weigh the costs, alternatives, and state-sovereignty interests that reasoned decisionmaking requires. *See State Farm*, 463 U.S. at 43; *Regents*, 591 U.S. at 30.

* * * * *

The undersigned States therefore urge ATF to withdraw the proposed rule, or, at a minimum, postpone any effective date under 5 U.S.C. § 705 pending judicial review.

Sincerely,



Letitia James
Attorney General of New York



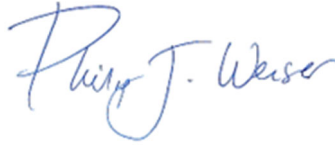
Kristin Mayes
Attorney General of Arizona

⁸⁹ 91 Fed. Reg. at 25,183.

⁹⁰ 91 Fed. Reg. at 25,183.



Rob Bonta
Attorney General of California



Philip J. Weiser
Attorney General of Colorado



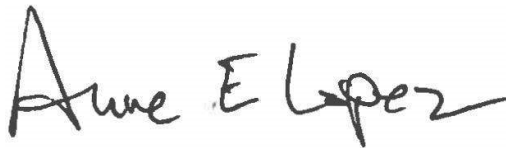
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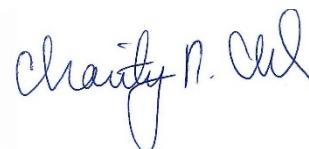
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August 5, 2026

Via Federal eRulemaking Portal

Submitted via Regulations.gov

The Honorable Todd Blanche,
Acting Attorney General of the United States

Robert Cekada,
Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

RE: Comment on Notice of Proposed Rulemaking to Remove Youth Handgun Safety Act Notice Requirement.

Dear Acting Attorney General Todd Blanche and ATF Director Robert Cekada,

We, the undersigned Attorneys General of Maryland, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington (“the States”), write in opposition to the Notice of Proposed Rulemaking issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”), Removing Youth Handgun Safety Act Notice, 91 Fed. Reg. 25187 (proposed May 8, 2026) (to be codified at 27 C.F.R. § 478) [hereinafter, “Proposed Rule”]. The Proposed Rule would eliminate Department of Justice (“DOJ”) regulations implementing the Youth Handgun Safety Act (“YHSA”), such that federal firearms licensees (“FFLs”) would no longer be required to post signs and provide written notice of the YHSA’s provisions to handgun purchasers.

As addressed in this comment letter, the Proposed Rule is arbitrary and capricious and harmful to the States. Accordingly, the States urge ATF to withdraw the Proposed Rule and maintain the existing notice requirements. As Attorneys General, we are deeply concerned that the Proposed Rule will have a detrimental impact on the firearm regulatory landscape. By removing the only point-of-sale notice warning handgun purchasers about the consequences of youth handgun possession and use, ATF is sending a dangerous message about its willingness to ease the responsibilities of FFLs at the expense of public safety.

I. INTRODUCTION

In 1994, Congress passed the YHSA, finding it “necessary and appropriate to assist the States in controlling violent crime by stopping the commerce in handguns with juveniles nationwide and allowing the possession of handguns by juveniles only when handguns are possessed and used under certain limited circumstances.”¹ Under the YHSA, 18 U.S.C. § 922(x), it is unlawful to sell, deliver, or transfer to a juvenile a handgun or handgun ammunition and for a juvenile to knowingly possess these items.

Following the YHSA’s enactment, President Clinton issued a memorandum in 1997 addressed to the Secretary of the Treasury requesting specific action to respond to the “national tragedy” of criminal use of firearms by young people.² At the time, “the number of juvenile offenders committing homicides by firearms [had] nearly quadrupled” in the preceding decade, “firearms [were] the fourth leading cause of accidental deaths among children ages 5 and 14,” and firearms were “the primary method by which young people commit[ed] suicide.”³ In addition to proposing comprehensive legislation, the President directed the Secretary of the Treasury to enforce the YHSA “and specifically, consistent with [the Secretary’s] statutory authority, to promptly publish in the Federal Register proposed regulations requiring that signs be posted on the premises of FFLs and that written notification be issued with each handgun sold to non-licensees”⁴

In response to that Presidential memorandum and pursuant to its authority under the Gun Control Act (“GCA”), ATF published a final rule in 1998, Posting of Signs and Written Notification to Purchasers of Handguns (“1998 Final Rule”).⁵ Under the 1998 Final Rule, FFLs are currently required to (1) display a sign at their licensed premises and (2) provide written notice to non-licensee purchasers. The required sign (ATF I 5300.1) reads as follows:

- (1) The misuse of handguns is a leading contributor to juvenile violence and fatalities.
- (2) Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives.
- (3) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18.

¹ 27 C.F.R. § 178.

² Administration of William J. Clinton, “Memorandum on Enforcing the Youth Handgun Safety Act,” 33 Weekly Comp. Pres. Doc 856 (June 11, 1997).

³ *Id.*

⁴ *Id.*

⁵ 27 C.F.R. § 178.

(4) A knowing violation of the prohibition against selling, delivering, or otherwise transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison.

The written notification to non-licensees must include the above YHSA notice as well as the relevant provisions of federal law, either by using ATF I 5300.2 or including the information in the sales receipt, invoice, or other packing material.⁶ These requirements have been in place and consistently followed by the FFL community for over 28 years.

In April 2026, DOJ and ATF issued 34 notices of final and proposed rulemaking as part of their effort to “reduce unnecessary burdens on law-abiding citizens and businesses.”⁷ However, ATF’s longstanding regulations designed to prevent youth handgun possession and promote public safety are far from “unnecessary burdens.” For only minute cost savings to FFLs, estimated at three cents per notice, the Proposed Rule would eliminate the requirements for FFLs to post the sign and provide notification concerning youth handgun possession and use, as described above.⁸

As explained below, the Proposed Rule is arbitrary and capricious for two primary reasons: (1) ATF failed to acknowledge its change in position regarding authority under the GCA; and (2) ATF failed to reasonably explain why it declined to maintain the rule in its current form, and in doing so, ignored an important aspect of the problem. Additionally, the Proposed Rule will harm the States by rescinding notice requirements despite the ongoing need for a comprehensive approach to address gun violence in this country. For all these reasons, ATF should withdraw the Proposed Rule.

II. THE PROPOSED RULE IS ARBITRARY AND CAPRICIOUS.

As a threshold matter, it is unclear whether ATF issued the Proposed Rule because ATF believes it lacks authority under the GCA or because the Proposed Rule will advance ATF’s preferred policy outcome. However, both positions are arbitrary and capricious. First, ATF has clear statutory authority to enforce the GCA by implementing the notice and warning requirements set forth in the 1998 Final Rule. Second, ATF does not reasonably explain its decision to remove notice requirements altogether, instead minimizing the true costs of the rule which clearly outweigh any benefits to FFLs.

⁶ Proposed Rule at 25188.

⁷ ATF, *DOJ and ATF Announce Regulatory Reforms to Reduce Burdens on Law-Abiding Gun Owners and Businesses* (Apr. 29, 2026), <https://www.atf.gov/news/press-releases/doj-and-atf-announce-regulatory-reforms-to-reduce-burdens-law-abiding-gun-owners-and-businesses>.

⁸ The Smoking Gun, *ATF Aims to Cut Gun Safety Warnings Meant to Protect Kids* (June 9, 2026), <https://smokinggun.org/atf-aims-to-cut-safety-warnings-meant-to-protect-kids/>.

A. ATF's Assertion that it Lacks Authority is Erroneous.

In the Proposed Rule, ATF asserts that “[n]othing in the [GCA] requires, *or authorizes*, the separate sort of notice, or signs, that the [1998 Final Rule] requires.”⁹ ATF claims that after “reevaluat[ing],” it now agrees with previous commenters that “the GCA does not require any sort of warning or notification under section 922(x).”¹⁰ However, ATF’s apparent position that it lacks authority to mandate warnings and notice under the GCA is both unexplained and incorrect.

In response to comments on the 1998 Final Rule challenging ATF’s authority to require licensees to inform prospective handgun purchasers about the YHSA, ATF stated that its “statutory authority to issue regulations to implement the GCA is clear” and that “this type of requirement is not unprecedented.”¹¹ That is, the GCA authorizes the Attorney General to issue “rules and regulations as are necessary to carry out” the statute, and the Attorney General delegated this authority to the Director of ATF.¹² Courts have recognized that this broad authorization “almost inevitably confers some measure of discretion to determine what regulations are in fact ‘necessary.’”¹³ The President himself recognized ATF’s broad regulatory authority in the initial memorandum underlying the 1998 Final Rule.¹⁴

Invoking its authority under the GCA, ATF published the 1998 Final Rule to “accomplish the goal of preventing inadvertent violations of the law without unduly burdening licensees or handgun purchasers.”¹⁵ In response to commenters on the 1998 Final Rule, ATF explained that the mandatory ATF Form 4473 similarly contains detailed explanations about federal law, including other GCA provisions.¹⁶ In contrast, the YHSA was never otherwise addressed during a firearms transaction.¹⁷ The decision to fill this gap with a point-of-sale notice and signage requirement was entirely within ATF’s discretion to implement the GCA.

Without acknowledging why, ATF has suddenly decided that it lacks authority to require warning or notification under the YHSA. ATF does not contend that the 1998 Final Rule was an unlawful agency action but quietly asserts that the notice requirement was beyond the scope of its authority to enforce the GCA. Not so. ATF must explain and clarify its position as to its own legal authority and reevaluate the Proposed Rule accordingly.

⁹ Proposed Rule at 25188 (emphasis added).

¹⁰ *Id.*

¹¹ 27 C.F.R. § 178.

¹² 18 U.S.C. § 926(a); *see also* Proposed Rule at 25188.

¹³ *National Rifle Ass’n v. Brady*, 914 F.2d 475, 479 (4th Cir. 1990).

¹⁴ Administration of William J. Clinton, “Memorandum on Enforcing the Youth Handgun Safety Act,” 33 Weekly Comp. Pres. Doc 856 (June 11, 1997) (“Existing law already bans the transfer of handguns to minors and juvenile possession of handguns . . . and grants [ATF] authority to prescribe rules and regulations to implement this provision.”).

¹⁵ 27 C.F.R. § 178.

¹⁶ *Id.*

¹⁷ *Id.*

B. ATF Failed to Provide a Reasoned Explanation for its Rejection of a Superior Alternative.

The Proposed Rule is not only arbitrary because ATF relied upon a flawed legal premise, but also because ATF did not fully weigh the likely costs against the purported benefits. ATF rejected Alternative 1, the “no-action alternative,” with little explanation, simply stating that “other alternatives provide more benefits by removing burdens for FFLs.”¹⁸ Although ATF recognizes the benefits of educating the public about the law through its community outreach and regulatory efforts in other contexts, ATF assigns no weight to the educational benefits of the Proposed Rule. The exclusion of such benefits is illogical and arbitrary.

The Proposed Rule contains an estimate that at three cents per black-and-white paper notice, each FFL would save an average of \$16 annually.¹⁹ ATF characterizes the cost of a piece of paper as an “undue burden” on FFLs, without adequately weighing the public safety rationale for its existence.²⁰ ATF itself briefly refers to the “risk that the public might not be informed of existing requirements not to deliver or transfer firearms to juveniles.”²¹ However, without considering the adverse impact of that risk, ATF concludes that risk is “de minimis” solely because the publication of the YHSA in the Statutes at Large and the U.S. Code self-executes notice.²²

ATF further assumes that usage of the internet has increased FFLs’ and the public’s awareness of the risks associated with youth access to handguns but provides zero evidence for that assumption.²³ By failing to address these public safety concerns, ATF neglects to reasonably explain why it opted for the deregulatory alternative. The value of notice to keep handguns out of young people’s hands certainly outweighs an annual (at most) \$16 printing fee, but ATF’s arbitrary analysis does not capture the deadly consequences of even one misplaced handgun. As noted further below, gun violence and firearm suicides are at a crisis point with respect to American youth.

Indeed, ATF acknowledges the benefits of notice and education through its other community outreach initiatives but does not address those benefits here. ATF collaborates with various stakeholders in a coordinated effort to “incorporate educational, community-oriented, and policy-driven activities to help keep our communities safe.”²⁴ For example, ATF partners with a firearm industry trade association, the National Shooting Sports Foundation (NSSF), on the “Don’t Lie for the Other Guy” campaign to educate the public about the penalties associated with buying a gun for someone who cannot legally buy one for themselves, or straw

¹⁸ Proposed Rule at 25190.

¹⁹ Proposed Rule 25189-90.

²⁰ *Id.* at 25188.

²¹ *Id.* at 25190.

²² *Id.*

²³ *Id.* at 25188.

²⁴ ATF, *Community Outreach*, <https://www.atf.gov/about/community-outreach>.

purchasing.²⁵ ATF explicitly acknowledges the power of FFLs as the “first line of defense” in preventing such purchases:

*“By posting prominent signage in the store indicating the illegality and penalties associated with straw purchases, retailers can deter attempts and raise public awareness. Sharing information and best practices for preventing straw purchases with other gun retailers and the public can lead to a broader understanding of the tactics used by individuals attempting to make straw purchases.”*²⁶

ATF also creates and circulates educational campaign posters to deter gun trafficking.²⁷

Despite ATF’s repeated recognition of the power of raising public awareness, ATF asserts that there is no benefit in the YHSA notice requirements here. This is a factual error. In the Proposed Rule, ATF erroneously claims that the sole purpose of the 1998 Final Rule was “advis[ing] handgun purchasers of the still relatively new requirements of the YHSA,” which are no longer “relatively new.”²⁸ However, the former President’s directive, which drove the adoption of the 1998 Final Rule, sought to “inform gun purchasers about their responsibility under Federal law to keep handguns from our children” and “ensure that gun purchasers are warned about the frequency with which handguns kill or injure our kids,” information and efforts which remain critical today.²⁹ In addition to the enforcement authority in federal firearms regulations, providing notice to gun sellers and purchasers can serve as a deterrent to lawbreaking in the first place, and such education plainly has a positive impact on adherence to the rule of law. Indeed, as detailed further below, public awareness campaigns have been found to have concrete and measurable impact on the viewer’s knowledge of the dangers posed by firearms.

ATF also attempts to justify the Proposed Rule by referencing its discussion of legal requirements with FFL applicants during their interview process.³⁰ However, even if first-time FFL applicants become aware of the YHSA at that stage, nothing about the application process ensures that *non-licensee purchasers* are informed of the risks of youth access to handguns, the importance of safe storage, and the criminal penalties for those who provide guns to anyone under the age of 18.

If the Proposed Rule is finalized, there would be no point-of-sale notice to prevent individuals from inadvertently delivering a handgun to a juvenile due to their unfamiliarity with

²⁵ ATF, *Don't Lie for the Other Guy*, <https://www.atf.gov/firearms/tools-services-law-enforcement/atf-firearms-programs/dont-lie-other-guy>.

²⁶ *Id.* (emphasis added).

²⁷ ATF, *Anti Firearms Trafficking Campaign Posters*, <https://www.atf.gov/firearms/tools-services-law-enforcement/anti-firearms-trafficking-campaign/campaign-posters>.

²⁸ Proposed Rule at 25188.

²⁹ Administration of William J. Clinton, “Memorandum on Enforcing the Youth Handgun Safety Act,” 33 Weekly Comp. Pres. Doc 856 (June 11, 1997).

³⁰ Proposed Rule at 25188.

the law. That lack of notice would heighten the risk of such transfer and misuse, posing deadly costs that ATF does not even attempt to address.

III. **THE PROPOSED RULE WILL HARM THE STATES.**

Gun violence is an enduring threat to youth in this country, and ATF should honor Congress's decision to keep handguns out of juveniles' hands by maintaining the point-of-sale reminder. The harms raised by the 1997 Presidential memorandum included the rise in juvenile offenders committing homicides with firearms, firearms causing accidental deaths among youth, and firearms being the primary method of suicide for youth.³¹ Tragically, the prevalence of firearm-related death and youth handgun misuse has only worsened since that time, further weighing in favor of retaining a rule intended to combat these issues.

In 2020, firearms became the leading cause of death for children and teens in the U.S.³² Among youth, gun violence has a disproportionate negative impact on children and teens in urban areas, particularly on Black and Latino children.³³ Additionally, firearm suicide rates are increasing at the highest rate for young people ages 10 to 24.³⁴ Researchers are continuing to explore the reasons for this crisis, which has been accompanied by an unprecedented surge in gun sales.³⁵ Indeed, when children are exposed to gun violence, there are far-reaching impacts on their physical and mental health, school performance, and overall well-being.³⁶

In enacting the YHSA, Congress found that firearm misuse by and around youth often stems from easy access to handguns.³⁷ At the time of the 1994 legislative session, states varied widely in their approach to regulating youth handgun possession. While some states restricted possession of handguns by youth under age 18, others prohibited it with several exceptions for educational and recreational purposes.³⁸ Inconsistent state laws and the rise of criminal firearm use warranted a nationwide solution, culminating in the YHSA. Today, the staggering rates of firearm-related deaths and injuries call for maintaining our commitment to clear and informative firearm regulations to prevent youth handgun misuse.

ATF wrongfully assumes that every individual is aware of the YHSA's provisions and that further efforts to educate the public are worthless. However, public health awareness campaigns on the safe storage of handguns have proven effective. For example, the "End Family

³¹ Administration of William J. Clinton, "Memorandum on Enforcing the Youth Handgun Safety Act," 33 Weekly Comp. Pres. Doc 856 (June 11, 1997).

³² Everytown Rsch. & Pol'y, *The Impact of Gun Violence on Children and Teens* (May 29, 2019), <https://everytownresearch.org/report/the-impact-of-gun-violence-on-children-and-teens/>.

³³ *Id.*

³⁴ Everytown Rsch. & Pol'y, *Too Many, Too Soon: Youth Firearm Suicide in the United States* (June 6, 2022), <https://everytownresearch.org/report/the-impact-of-gun-violence-on-children-and-teens/>.

³⁵ *Id.*

³⁶ Everytown Rsch. & Pol'y, *The Impact of Gun Violence on Children and Teens* (May 29, 2019), <https://everytownresearch.org/report/the-impact-of-gun-violence-on-children-and-teens/>.

³⁷ 27 C.F.R § 178.

³⁸ DOJ Office of Justice Programs, *Juvenile Justice Reform Initiatives in the States 1994-1996* (Oct. 1, 1997), <https://www.ojp.gov/pdffiles/reform.pdf>.

Fire” campaign launched by Brady and the Ad Council in August 2018 encourages safe storage of handguns to prevent misuse at home.³⁹ In 2023, an Ad Council study of nearly 2,000 adults living in gun-owning households revealed the following: 58% of respondents who knew about the campaign began storing firearms in a safer way; 31% of aware respondents sought out information about how to safely store their firearms; and 41% of aware respondents talked to friends or family about safe storage.⁴⁰ This initiative is only one example of the tangible impact awareness can have on changing attitudes and behaviors around gun usage and safe storage. As gun violence continues to be a national crisis, ongoing notices and signage about the YHSA can increase awareness for handgun purchasers, community members, and juveniles who may be deterred from breaking the law.

Finally, a common basis for revocation of an FFL is the willful transfer of a firearm to a prohibited person, which includes juveniles under the YHSA.⁴¹ Paper notices and signage are additional preventive measures to ensure compliance and avoid violations.

* * *

For all these reasons, the States oppose the Proposed Rule and request that ATF retain the written YHSA notice and signage requirements. Removing a regulation that facilitates greater awareness of the law for minimal benefits to FFLs conflicts with ATF’s mission to promote public safety.

Sincerely,



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³⁹ Brady: United Against Gun Violence, *Brady and the AD Council Partner With Dentsu for Latest in Award-Winning End Family Fire Campaign to Promote Safe Gun Storage* (July 11, 2023), <https://www.bradyunited.org/press/safe-stories-psa>.

⁴⁰ *Id.*

⁴¹ ATF, *Revocation of Firearms Licenses*, <https://www.atf.gov/firearms/tools-and-services-firearms-industry/current-licensees/revocation-firearms-licenses>.



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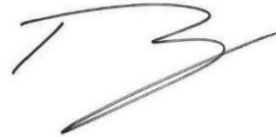
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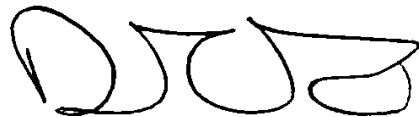
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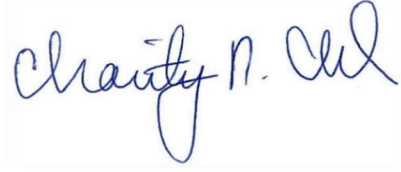
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August 4, 2026

Via Federal eRulemaking Portal

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Attn: RIN 1140-AA78

Re: Comments on Notice of Proposed Rulemaking, "*Firearms Transactions and Straw Purchases*," 91 Fed. Reg. 24,448 (May 6, 2026); RIN 1140-AA78; Docket No. ATF-2026-0013; ATF 2025R-41P

Dear ATF Director Cekada,

We, the Attorneys General of New York, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Virginia and Washington ("the States") submit this comment to the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") in response to the Proposed Rule entitled "*Firearms Transactions and Straw Purchases*," 91 Fed. Reg. 24,448 (May 6, 2026) ("Proposed Rule" or "NPRM").

We strongly urge ATF to withdraw the Proposed Rule. Although styled as a clarification, the Proposed Rule would for the first time purport to define by regulation the scope of the federal straw purchasing crimes. That is not a modest restatement of existing law. It is an attempt to narrow criminal statutes that Congress enacted, that the Supreme Court has already construed, and that ATF itself has enforced for decades through Form 4473 and the actual-buyer rule. The Proposed Rule attempts to unravel the careful statutory structure designed by Congress to

regulate straw purchases, flouts Supreme Court precedent, undermines the States' ability to investigate and prosecute illegal gun sales, and will expose the States to more gun-related crime. For these reasons, the Proposed Rule exceeds ATF's statutory authority, is contrary to law, and is arbitrary and capricious under the Administrative Procedure Act ("APA").

Every person purchasing a firearm from a licensed dealer must answer one critical question: "Are you the actual buyer of this firearm?" This question certifies that the background check screens the person who will actually acquire the firearm, and it creates the accurate record investigators rely upon when a firearm is recovered at a crime scene. A straw purchase defeats both safeguards: the person who is checked and recorded is merely a stand-in, while the real buyer remains invisible. Yet the Proposed Rule would tell buyers and dealers that entire categories of purchases made on someone else's behalf need not be disclosed at all, including a purchase by one spouse with the other spouse's money, and a parent's purchase of a handgun for an 18-to-20-year-old who cannot lawfully buy one from a dealer. In those transactions, the background check will screen the wrong person, the dealer's records will name the wrong purchaser, and a trace will lead investigators to the wrong individual in exactly the situations where the true buyer's identity matters most, such as firearms trafficking, domestic violence, and unlawful handgun access by young adults. Because the States have built their own licensing, background check, and crime gun tracing systems on that same federal foundation, State investigations will go cold, State prosecutions will become harder to prove, and the people responsible for violent gun crimes will too often remain beyond the reach of the law.

I. Legal Background.

A. Statutory Background.

Federal law makes a licensed gun dealer "the principal agent of federal enforcement" in keeping firearms away from those who may not have them.¹ To that end, the Gun Control Act ("GCA") "establishes a detailed scheme to enable the dealer to verify, at the point of sale, whether a potential buyer may lawfully own a gun," and "insists that the dealer keep certain records, to enable federal authorities to both verify ownership information and trace firearms used in crimes."² Before each firearm sale, the dealer must interact with the buyer on the premises, verify their photo identification, record the buyer's name, age, and residence, and run the buyer through the National Instant Criminal Background Check System.³

Two interrelated provisions in the GCA help restrict straw purchases, *i.e.* the purchase of a firearm by one person on behalf of another. Section 922(a)(6) makes it unlawful to make any false statement "material to the lawfulness of the sale," and Section 924(a)(1)(A) makes it unlawful to make a false statement "with respect to the information required . . . to be kept" in a dealer's records.⁴ During each firearm sale transaction, a gun buyer is required to complete ATF Form 4473, which requires the buyer to certify that they are the "actual transferee/buyer" of the

¹ *Huddleston v. United States*, 415 U.S. 814, 824 (1974).

² *Abramski v. United States*, 573 U.S. 169, 172-173; *see* 18 U.S.C. §§ 922(b)(5), (c), (t), 923(g).

³ *See id.* §§ 922(b)(5), (c), (t)(1).

⁴ *Id.* §§ 922(a)(6), 924(a)(1)(A).

firearm and warns them that “[y]ou are not the actual transferee/buyer if you are acquiring any of the firearm(s) on behalf of another person.”⁵

Prior to 1994, ATF read Section 922(a)(6) narrowly, treating a false statement as material to the lawfulness of the sale only where the true purchaser was a prohibited person under Section 922(d) (which defines the categories of people who cannot lawfully own a firearm).⁶ ATF abandoned this interpretation in 1994, and in the three decades since, it has interpreted this provision to mean that a person makes a false statement material to the lawfulness of the sale whenever one misrepresents the identity of the true purchaser *even where* the true purchaser could have lawfully purchased the gun themselves.⁷ The Supreme Court affirmed this understanding of Section 922(a)(6) in *Abramski v. United States*.⁸ In that case, the Court reviewed the legality of a conviction under Section 922(a)(6) of a former police officer who was paid to purchase a gun for his uncle.⁹ Abramski challenged his conviction on the basis that by falsely asserting that he was the actual buyer of the firearm, he did not make a statement “material to the lawfulness of the sale” because his uncle was legally eligible to own a gun.¹⁰ The Court reasoned that straw purchasing circumvents the GCA point of sale verification scheme by preventing licensed gun dealers from verifying the identity of the true buyer.¹¹ As the Court found, many provisions in the GCA depend upon the dealer obtaining accurate information about the true buyer, and as such, exempting straw purchases, even where the true buyer could lawfully purchase the firearm, would undermine the GCA’s broader statutory framework.¹²

In 2022, Congress enacted the Bipartisan Safer Communities Act (“BSCA”), 18 U.S.C. § 932, which added a new offense to the GCA prohibiting the purchase of a firearm “for, on behalf of, or at the request or demand of” another person when the buyer knows or has reasonable cause to believe that the other person “meets the criteria” of Section 922(d), intends specified criminal misuse, or intends downstream transfer to such a person.¹³

⁵ ATF Form 4473, Firearms Transaction Record (rev. Aug. 2023), Question 21.a. & instructions; *see also* 91 Fed. Reg. 24,450.

⁶ *See* 91 Fed. Reg. 24,449 (describing ATF’s prior, narrower interpretation of § 922(a)(6)). ATF’s change in position does not alter the governing law. In *Abramski v. United States*, the Supreme Court expressly rejected the relevance of ATF’s shifting interpretations of § 922(a)(6), holding that “ATF’s old position [was] no more relevant than its current one—which is to say, not relevant at all.” 573 U.S. 169, 191 (2014). That is because “criminal laws are for courts, not for the Government, to construe.” *Id.* at 191. ATF cannot alter the construction of the straw purchase provisions simply by way of regulation. Rather, the relevant question is what did Congress command, and *Abramski* already answered it: “nothing suggests that Congress—the entity whose voice *does* matter—limited its prohibition of a straw purchaser’s misrepresentation” in the manner ATF now proposes. *Id.* (emphasis in original).

⁷ 91 Fed. Reg. 24,450.

⁸ 573 U.S. 169 (2014).

⁹ *Id.* at 175.

¹⁰ *Id.* at 175-76.

¹¹ *Id.* at 171-72, 180.

¹² *Id.* at 181-83.

¹³ Pub. Law 117-159, 136 Stat. 1327 (June 25, 2022), codified at 18 U.S.C. § 932(b).

B. The Proposed Rule.

The NPRM proposes creating a new section in part 478 of ATF's implementing regulations "that would restate the law of straw purchasing."¹⁴ The Proposed Rule adds a series of new categories of purchases which would be exempt from being unlawful straw purchases. These exemptions include (1) purchases by a parent for their minor child, defined as someone under 21; (2) purchases made by one cohabitating spouse, where the other spouse has paid for the firearm; (3) retrieving a repaired firearm for a third party; and (4) collecting a firearm that was a bona fide gift from another.¹⁵ The Proposed Rule also defines straw purchases for a prohibited person as occurring when "a person knowingly purchases, or conspires to purchase, any firearm on behalf of, or at the request or demand of any other person, knowing or having reasonable cause to believe that such other person: (i) Is prohibited from receiving a firearm under 18 U.S.C. § 922(d); or (ii) Intends to use, carry, possess, or sell, or otherwise dispose of a firearm in furtherance of a felony, a federal crime of terrorism, or a drug trafficking crime; or (iii) Intends to sell or otherwise dispose of the firearm to another person described in paragraphs (i) or (ii)."¹⁶

II. The Proposed Rule is Contrary to Law.

The Proposed Rule is contrary to law because it contravenes the GCA, BSCA, and binding Supreme Court precedent. ATF cannot enlarge or contract the scope of the offenses Congress has created, nor can it create exemptions from straw purchases that are broader than the Court's ruling in *Abramski*.¹⁷

Proposed Section 478.105(c)(3), which would exempt straw purchases where one cohabitating spouse purchases a firearm that the other spouse paid for, is plainly unlawful under Section 922 because it obscures who is "really paying for the gun and meant to take possession of it."¹⁸ The ATF's supposed justification for this exemption—that "the form will identify the name of a responsible adult who acquired the firearm and the correct address," and that "it does not matter which spouse fills out the form"¹⁹—was soundly rejected by the Court in *Abramski*. As the Court made clear, identifying another responsible adult is not enough to comply with the GCA; the licensed dealer must verify the identity of the *actual* buyer.²⁰ Indeed, courts and the

¹⁴ 91 Fed. Reg. 24,450.

¹⁵ *Id.* at 24,453 (reviewing proposed additions to 27 C.F.R. §§ 478.105 (c)(2), (c)(3), (c)(5), (c)(7)).

¹⁶ *Id.*

¹⁷ ATF's 2024 "Engaged in the Business" final rule provides that its regulatory presumptions "shall not apply to any criminal case." 27 C.F.R. § 478.13(h). ATF does not explain the different approach here. *See Grayscale Invs., LLC v. S.E.C.*, 82 F.4th 1239, 1245 (D.C. Cir. 2023) ("A fundamental norm of administrative procedure requires an agency to treat like cases alike." (internal quotation omitted)).

¹⁸ *Abramski*, 573 U.S. at 179–80.

¹⁹ 91 Fed. Reg. 24,451.

²⁰ *Abramski*, 573 U.S. at 188–90. The Court's "alias" hypothetical is directly on point: even where the true owner is eligible, he "would in any event have made a false statement about who will own the gun, impeding the dealer's ability to carry out its legal responsibilities." *Id.* at 190. Indeed, there are states that do not permit joint registration of a firearm upon purchase, such as California. *See, e.g.,* Cal. Penal Code §§ 28150 (defining "purchaser" to mean "the purchaser or transferee of a firearm or the person being loaned a firearm"), 28160 (for firearm sales transactions, requiring information about the "purchaser," as well as the signature and thumbprint of the "purchaser"), 11106(b)(2) (contemplating a record of one person who owns a firearm).

Department of Justice have repeatedly treated spousal acquisitions as straw purchases where the spouse completing the paperwork was not the true buyer.²¹ ATF, for its part, cites no judicial decision holding that any of its proposed exclusions falls outside 18 U.S.C. § 922(a)(6), an omission that deprives the public of the notice on which informed comment depends.

Proposed Section 478.105(c)(2), which would exempt straw purchases made by a parent or guardian for their “minor children,” defined as anyone under the age of 21, violates the plain language of Section 922 for the same reason. This exemption also contravenes other provisions of the GCA and ATF’s implementing regulations, which define a minor as someone under the age of 18.²² It also conflicts with the GCA’s prohibition on selling handguns to anyone under 21.²³ Nor does the savings clause in proposed Section 478.105(e)(2) cure the defect.²⁴

But the Proposed Rule does not codify the fact-bound inquiry the Supreme Court requires, which necessitates ascertaining the identity of the true buyer; it converts each situation into a categorical safe harbor, and that conversion is itself contrary to law. For example, Proposed Section 478.105(c)(5), which would exempt purchases where one is “[r]etrieving a repaired firearm by an individual for a third party,”²⁵ would let an individual retrieve a firearm “for” a true buyer who never appears, is never identified, and is never checked. Similarly, Proposed Section 478.105(c)(7), which would exclude “[c]ollecting a firearm that was a bona fide gift from another,” cannot be reconciled with (c)(1), which exempts bona fide gifts so long as no “purchaser accepts money, services, or any other consideration of value in exchange for acquiring the firearm.”²⁶ Where the person collecting the “gift” in fact supplied the money for it or directed its purchase, that person is the actual buyer and the nominal giver was the straw purchaser—yet (c)(7) would treat the collection as an excluded gift even though (c)(1) treats the very same consideration as disqualifying. These exemptions violate Section 922 to the extent that they exclude genuine straw purchases from the reach of the GCA.

The Proposed Rule is also contrary to law because its “restatement” of Section 932 is an unlawful rewriting, not a restatement of the law. Whereas in BSCA Congress required proof that the purchaser knew or had reasonable cause to believe that the recipient meets the criteria of a prohibited person under Section 922(d), the Proposed Rule heightens the scienter requirement to require that the purchaser knew that the recipient **“is prohibited from receiving a firearm**

²¹ See, e.g., *United States v. Howell*, 37 F.3d 1197, 1201-03 (7th Cir. 1994); *United States v. Skidmore*, 254 F.3d 635, 638–39 (7th Cir. 2001). The exclusion would reverse course on decades of precedent that the NPRM never confronts, thereby forcing dealers, investigators, and juries to distinguish between a supposedly benign spousal purchase and a prohibited person straw transaction.

²² 18 U.S.C. § 922(x)(5); 27 C.F.R. § 478.103(b)(3).

²³ 18 U.S.C. § 922(b)(1); 27 C.F.R. § 478.99(b)(1).

²⁴ Because proposed § 478.105(e) preserves liability only where the recipient is a prohibited person, each categorical exclusion shields straw purchases for non-prohibited true buyers—the transaction *Abramski* held to violate Section 922(a)(6). See 573 U.S. at 172.

²⁵ 91 Fed. Reg. 24,453.

²⁶ See *id.* Currently, ATF’s Instructions for ATF Form 4473, Question 21.a. instruct that a gift is “not bona fide” if another person provided money, services, or items of value to acquire the firearm. The Proposed Rule neither acknowledges nor explains the contradiction between the spousal-money exclusion and ATF’s own operative instruction. See *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (“[A]n unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.” (cleaned up)).

under 18 U.S.C. 922(d).²⁷ That formulation turns a fact-based knowledge requirement into a knowledge-of-law requirement, which unlawfully and unreasonably heightens the burden of proof for this crime. Congress enacted Section 932 in 2022, in the aftermath of the mass shootings in Buffalo and Uvalde, to *strengthen* federal tools against straw purchasing; the Proposed Rule would undermine that statute by heightening its scienter requirement and narrowing its reach.²⁸

III. The Proposed Rule Exceeds ATF’s Statutory Authority.

The APA requires courts to set aside agency action that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”²⁹ In determining whether agency action exceeds statutory authority, “the question . . . is always whether the agency has gone beyond what Congress has permitted it to do.”³⁰ Therefore, an agency has no power to tailor its rulemaking “to bureaucratic policy goals by rewriting unambiguous statutory terms.”³¹

The Proposed Rule exceeds ATF’s statutory authority because it directly contravenes the clear meaning of the GCA by creating new exemptions for straw purchases, as described above. The Supreme Court in *Abramski* definitively interpreted Sections 922(a)(6) and 924(a)(1)(A) to reach any buyer who conceals the actual purchaser, “whether or not the true buyer could have purchased the gun without the straw.”³² ATF also exceeded its statutory authority by attempting to define straw purchases more narrowly than Congress’s unambiguous language in Section 926. ATF has no authority to interpret these statutes in this manner.³³

IV. The Proposed Rule is Arbitrary and Capricious.

A. ATF Has Not Sufficiently Considered the Harmful Effects on the States and their Residents.

Straw purchasing is a dangerous, pervasive problem for the States. ATF’s most recent National Firearms Commerce and Trafficking Assessment found that straw purchasing from licensed dealers was identified in 39.5% of gun trafficking investigations between 2017 and

²⁷ 91 Fed. Reg. 24,453 (proposed rule 478.105(e)(i)) (emphasis added). Proposed § 478.105(e) also omits Section 932’s interstate-commerce element; drops “for” from “for, on behalf of, or at the request or demand of”; uses “felony,” “Federal crime of terrorism,” and “drug trafficking crime” without § 932’s definitions; and describes the offense as limited to purchases for a “prohibited person” although § 932 also reaches intended criminal misuse and downstream transfer.

²⁸ See 168 Cong. Rec. S3046–47 (daily ed. June 22, 2022) (statements of Sens. Schumer and McConnell); Cong. Rsch. Serv., R47310, Bipartisan Safer Communities Act (P.L. 117-159): Section-by-Section Summary 1 (2022) (“The BSCA was enacted in the aftermath of mass shootings in Uvalde, TX, and Buffalo, NY.”). Section 932 created a new, additional offense; it did not amend, narrow, or displace §§ 922(a)(6) or 924(a)(1)(A), which were left intact against the backdrop of *Abramski*.

²⁹ 5 U.S.C. § 706(2)(C).

³⁰ *City of Arlington v. F.C.C.*, 569 U.S. 290, 297–98 (2013).

³¹ *Util. Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 325 (2014).

³² *Abramski*, 573 U.S. at 172.

³³ ATF’s view is entitled, at most, to respect under *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944), but a reading the Supreme Court has already rejected has by definition no power to persuade, *Abramski*, 573 U.S. at 191.

2021, and was the second most frequent trafficking channel during this timeframe.³⁴ By way of example, straw purchasing causes acute harms in the Northeast region, where traffickers from southern States bring guns to northern States along Interstate-95.³⁵ Regrettably, straw purchasing is also the trafficking channel most often tied to gun violence: nearly 24% of straw purchasing trafficking cases were linked to at least one shooting.³⁶

ATF utterly fails to account for the harm flowing from the agency's attempted narrowing of unlawful straw purchasing. Legalizing categories of straw purchases will frustrate the States' ability to perform background checks on the true firearm purchasers, which will in turn limit the success of the investigations and prosecutions that States can conduct when crimes are committed using these guns. Although ATF acknowledges that "properly identifying the immediate transferee of the firearm in the FFL's records is a critical step in aiding law enforcement with tracing a firearm used in violent crime,"³⁷ it does not explain why it is reasonable for the Proposed Rule to undermine that critical step, particularly when doing so risks exposing the States and their residents to increased gun violence and crime.³⁸ Indeed, ATF concedes that it "does not have sufficient information to calculate quantifiable savings" from the Proposed Rule and asks the public to supply the missing data.³⁹

Nor does ATF engage with the strong reliance interests at stake. When an agency changes its position, it must also assess whether its prior policy has "engendered serious reliance interests," and if so, consider whether the agency's other interests and policy concerns outweigh those reliance interests.⁴⁰ The States are dependent on successful federal background checks and the maintenance of accurate firearm sale records to investigate and prosecute their criminal laws, including the unlawful possession of firearms, unlawful gun trafficking and gun violence. The States' reliance is also written directly into their law: Illinois, California, Minnesota, Maryland,

³⁴ ATF, National Firearms Commerce and Trafficking Assessment (NFCTA), Volume III: Firearms Trafficking Investigations, Part III: Firearm Trafficking Channels and Methods Used 1–2 & Table FTC-02 (Apr. 2024) (straw purchasing identified in 3,305 of 8,373 investigations (39.5%), second only to unlicensed dealing at 40.7%; straw-purchasing share rising from 38.1% to 42.6%; straw purchasing accounting for 47.2% of Northeast-region investigations).

³⁵ ATF, NFCTA, Volume IV: Protecting America from Trafficked Firearms—Part IV: Firearm Trafficking Investigations Updates and New Analysis 10–14 (Jan. 2025) (identifying an East Coast Interstate-95 pipeline whose destination "market states" include Massachusetts; more than 89% (51,140 of 57,282) of crime guns recovered in those market states traced to a purchaser); see ATF, NFCTA, Volume III, Part III, *supra* (Northeast-region trafficking-channel data).

³⁶ ATF, NFCTA, Volume III: Firearms Trafficking Investigations, Part IX: Investigation Outcomes 5 (Apr. 2024).

³⁷ 91 Fed. Reg. 24,449.

³⁸ *Id.* 24,451 (ATF "requests more information from the public regarding the economic effects" of the Proposed Rule). The costs ATF never analyzed include the diversion of firearms the exclusions would facilitate, the handgun age-limit workaround the parental exclusion would create, the effect on straw purchase investigations and prosecutions, and the burden on dealers who must parse the line between an excluded family acquisition and a prohibited-person straw at the point of sale. See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency action is arbitrary and capricious where it "entirely failed to consider an important aspect of the problem"); *Michigan v. EPA*, 576 U.S. 743, 752–53 (2015) (same). The Director's certification under the Regulatory Flexibility Act that the rule "will not impose any additional costs," 91 Fed. Reg. 24,452, relies on the same benefit ATF concedes it cannot measure and therefore lacks the "statement providing the factual basis" that 5 U.S.C. § 605(b) requires.

³⁹ 91 Fed. Reg. 24,451.

⁴⁰ *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (internal quotation omitted).

New Jersey, and New York tie their background-check and point-of-sale procedures to the true purchaser of the firearm, and Massachusetts and the District of Columbia tie firearm eligibility, registration, and transfer records to the actual person acquiring or possessing the firearm.⁴¹ The States' crime gun tracing regimes are equally dependent on the accuracy of federal transaction records: state statutes mandate that recovered crime guns be traced through ATF's National Tracing Center, and a trace terminates at the buyer recorded on the Form 4473, so a record that identifies a nominal stand-in rather than the actual buyer stops the trail one step short of the trafficker.⁴² Other States go further, criminalizing false statements on the federal Form 4473 itself; narrowing the actual-buyer certification would undercut the predicate on which those state offenses depend.⁴³ ATF failed to consider how the Proposed Rule's changes to the GCA will impact the States' ability to enforce their laws.

ATF's proposed rule will also create confusion with purchasers. ATF's Form 4473 warns that a false certification that the purchaser is the "actual transferee/buyer" is "a crime punishable as a felony under Federal law" and that "you are not the actual buyer if you are acquiring the firearm(s) on behalf of another person."⁴⁴ But the Proposed Rule appears to permit purchases for another person in certain situations.⁴⁵ ATF fails to address this inconsistency.

ATF's decision-making is also arbitrary and capricious because it disregarded the available evidence before it. ATF's own research identifies straw purchasing as the second most frequent firearm trafficking channel nationally and the trafficking method most frequently linked to shootings.⁴⁶ ATF never explains why additional exemptions are warranted in the face of its own findings—a failure to consider "an important aspect of the problem" that is arbitrary and capricious.⁴⁷ ATF also failed to consider less harmful alternatives to its categorical exclusions.⁴⁸ For example, ATF could codify the settled, court-recognized categories while adding an express

⁴¹ Every one of these State systems rests on the same premise the federal system does — that the person background-checked, recorded, licensed, or registered as the buyer is the person actually acquiring the firearm, not a nominal stand-in. *See, e.g.*, 430 Ill. Comp. Stat. 65/3(a-10), 65/3.1(e); Cal. Penal Code §§ 27515, 28220(a)–(b); Mass. Gen. Laws ch. 140, § 123(f), (h), (m); Minn. Stat. §§ 624.7132, subdvs. 1–5, 15, 624.7134, subdvs. 2–3; Md. Code Ann., Pub. Safety §§ 5-118, 5-139, 5-141, 5-204.1; D.C. Code §§ 7-2502.01, 7-2502.03, 7-2502.04, 22-4510, 22-4511; N.J. Stat. Ann. § 2C:58-3(a)(3), (b)(1)–(3); N.Y. Gen. Bus. Law § 898; N.Y. Exec. Law § 228; N.Y. Penal Law § 265.17.

⁴² *See, e.g.*, Mass. Gen. Laws ch. 140, §§ 131Q, 121E(a); Cal. Penal Code § 11108.3(a)–(b); 5 Ill. Comp. Stat. 830/10-5; N.Y. Exec. Law § 230(4). Each State regime depends on ATF's crime gun tracing system, which identifies the buyer recorded on the Form 4473; a record naming a nominal stand-in stops the trace short of the actual buyer — a reliance interest and cost to the States the NPRM never confronts.

⁴³ *See, e.g.*, 720 Ill. Comp. Stat. 5/24-3.5. State offenses built on the Form 4473's actual-buyer certification would be completely undermined, which is a direct effect on the States that ATF's federalism certification never considers.

⁴⁴ ATF Form 4473, Firearms Transaction Record (rev. Aug. 2023), Question 21.

⁴⁵ *See* 91 Fed. Reg. 24,453.

⁴⁶ *See supra* notes 35, 37.

⁴⁷ *State Farm*, 463 U.S. at 43.

⁴⁸ Among the alternatives ATF did not consider: codifying only the actual-buyer rule *Abramski* announced; codifying only the settled, court-recognized non-straw categories while omitting the spousal-money and parental exclusions; declining to define "minor child" to include legal adults aged 18 to 20; replacing the Section 932 paraphrase with a bare cross-reference to the statute and stating that nothing in Section 478.105 limits, alters, narrows, or construes liability under 18 U.S.C. § 932; issuing sub-regulatory guidance rather than a binding rule; and severing genuine paperwork clarifications from the substantive carveouts. The States identify these alternatives not as substitutes for their request that ATF withdraw its Proposed Rule, but to illustrate the many reasonable alternatives that ATF failed to consider, as it was required to do. *See State Farm*, 463 U.S. at 46–51.

limiting principle: no exclusion applies where the person completing the transaction is not the actual buyer, that is, where another person supplied the consideration, directed or selected the purchase, or is the intended possessor.

B. ATF Changed its Prior Position without Justification.

When an agency changes a prior policy, it must “display awareness that it *is* changing position,” by providing a “reasoned explanation” that “show[s] that there are good reasons for the new policy.”⁴⁹ Here, ATF has drastically changed position by proposing to exempt a long list of unlawful straw purchases from the reach of the GCA. Nowhere does ATF provide a meaningful explanation for why these new exemptions are needed, or how they further the GCA’s statutory objectives.

As discussed above, ATF has interpreted Section 922 consistently since 1994. Since 2000, ATF has partnered with the National Shooting Sports Foundation in the “Don’t Lie for the Other Guy” campaign—a national retailer-training and public-education program whose entire purpose is to help dealers detect, deter, and refuse straw purchases and to teach the public that buying a firearm for someone else is a federal felony.⁵⁰ ATF reaffirmed that position as recently as 2025, when ATF and NSSF publicly marked the campaign’s twenty-fifth anniversary and described straw purchasing as “serious risk to public safety by allowing guns to get into the hands of those who are a danger to themselves or others.”⁵¹ ATF’s own website states that after Congress enacted the BSCA in 2022, the agency expanded—not narrowed—its anti-straw purchase outreach.⁵²

ATF does not meaningfully acknowledge that it has changed position; instead, it purports to offer a “restatement” of law. But instead of providing a rationale for why its new interpretation of is warranted, ATF engages in obfuscation. For example, ATF attempts to justify the cohabitating spouse exemption by arguing that “the form will identify the name of a responsible adult who acquired the firearm and the correct address,”⁵³ even though this plainly undermines and contravenes the GCA and *Abramski*. A background check or trace that leads to a convenient family intermediary is not the equivalent of a trace that leads to the actual person who funded, selected, directed, or intended to possess the firearm. Yet, ATF casually dismisses the problem as a matter of “family affairs.”⁵⁴

⁴⁹ *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (emphasis in original).

⁵⁰ ATF, *Don’t Lie for the Other Guy*, <https://www.atf.gov/firearms/dont-lie-other-guy> (stating that ATF has partnered with the National Shooting Sports Foundation for more than 25 years to combat straw purchasing).

⁵¹ ATF Press Release, *ATF and NSSF Celebrate 25 Years of Partnership with the ‘Don’t Lie for the Other Guy’ Anti-Straw Purchasing Campaign* (Sept. 15, 2025), <https://www.atf.gov/news/press-releases/atf-and-nssf-celebrate-25-years-partnership-dont-lie-other-guy-anti-straw-purchasing-campaign>.

⁵² ATF, *Don’t Lie for the Other Guy*, *supra* note 50.

⁵³ *Id.*

⁵⁴ 91 Fed. Reg. 24,451.

C. ATF's Piecemeal Rulemaking is Procedurally and Substantively Defective.

ATF is currently engaged in a massive rulemaking endeavor. The Proposed Rule is one of thirty-four Proposed and Final Rules ATF announced in May 2026.⁵⁵ Although many of these Rules seek to regulate interdependent parts of ATF's regulatory scheme, ATF has chosen to announce each Rule in isolation.

Where an agency simultaneously advances multiple rules within the same regulatory system, the combined effect of those rules must be part of the "important aspect of the problem" the agency examines.⁵⁶ An agency must give materially related regulatory actions consistent treatment and reconcile its approach across them.⁵⁷ Here, ATF invites comment on each Rule but fails to acknowledge or explain how each Rule could be impacted by the others.

For example, the Proposed Rule fails to mention that ATF is simultaneously proposing changes to Form 4473 – the document on which the Section 922(a)(6) actual-buyer certification is made. ATF performed a cost-benefit analysis of the Form 4473 Proposed Rule, relying on its longstanding interpretation of Section 922,⁵⁸ without acknowledging that this Proposed Rule seeks to upend that interpretation. ATF's disregard of a known, contemporaneous, interrelated rule operating on the same transaction neither "examine[s] the relevant data" nor considers an "important aspect of the problem," and is therefore arbitrary and capricious.⁵⁹

Even putting aside this problematic segregation of interrelated rulemakings, this Proposed Rule suffers from additional procedural defects. Because ATF maintains that it is restating the law, rather than acknowledging how it is rewriting it, the Proposed Rule does not meaningfully account for the Proposed Rule's impact. ATF should not have determined the Proposed Rule was "not a significant regulatory action" under Executive Order 12,866,⁶⁰ when it is clear the Rule meets that definition because it is likely to "adversely affect in a material way" public health and safety, and the States' ability to govern.⁶¹ ATF was wrong to claim that the Proposed Rule "would not create a criminal regulatory offense,"⁶² when it in fact does so, by redefining what conduct is subject to federal criminal enforcement under Sections 922(a)(6), 924(a)(1)(A), and 932.⁶³ In the same vein, ATF improperly claimed that the Proposed Rule "will not have substantial direct effects on the states" and therefore does not "meaningfully implicate federalism."⁶⁴ ATF's finding under the Paperwork Reduction Act that the Rule "would not create any new information collection requirements or impact any existing ones" is equally untenable.⁶⁵

⁵⁵ Since May 2026, ATF has published additional proposals as part of this same package. See ATF, *New Era of Reform* (May 12, 2026), available at <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform>.

⁵⁶ *State Farm*, 463 U.S. at 43; see *Michigan v. E.P.A.*, 576 U.S. 743, 752–53 (2015); *Bus. Roundtable v. S.E.C.*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011).

⁵⁷ *Grayscale Invs.*, 82 F.4th at 1245.

⁵⁸ See 91 FR 25,439 – 25,440.

⁵⁹ *State Farm*, 463 U.S. at 43.

⁶⁰ 91 Fed. Reg. 24,451.

⁶¹ Exec. Order No. 12,866 § 3(f); 58 Fed. Reg. 51,735 (Oct. 4, 1993).

⁶² 91 Fed. Reg. 24,451 (Executive Order 14,294 discussion); Exec. Order No. 14,294, *Fighting Overcriminalization in Federal Regulations*, 90 Fed. Reg. 20,363 (May 14, 2025).

⁶³ See 91 Fed. Reg. 24,450–51.

⁶⁴ *Id.* 24,451–52.

⁶⁵ *Id.* 24,452.

ATF advanced this rule as part of a package the Department of Justice and ATF publicly described as the product of “industry and expert feedback,” “partnership with the firearms industry,” and “trust and collaboration” with licensees.⁶⁶ Industry organizations have publicly claimed substantial authorship of the package, describing “months” of work with ATF and DOJ and taking credit for specific rule changes.⁶⁷ Where an agency relies on input from regulated parties—including legal theories, factual assertions, or draft language—the substance of that input must appear in the record so the public can respond and a court can assess the basis for the agency’s decision.⁶⁸ ATF should place into this docket all pre- and post-NPRM communications with industry representatives concerning the scope of the straw-purchase prohibition, and reopen the comment period so the public and the States have an adequate opportunity to respond.

Conclusion

In light of the foregoing, the undersigned Attorneys General on behalf of the States urge ATF to withdraw the Proposed Rule or, in the alternative, postpone any effective date under 5 U.S.C. § 705 pending judicial review.

Sincerely,



Letitia James
Attorney General of New York



Kristin Mayes
Attorney General of Arizona



Rob Bonta
Attorney General of California



Philip J. Weiser
Attorney General of Colorado

⁶⁶ ATF, *New Era of Reform: Modernize* (May 12, 2026), available at <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform> (DOJ and ATF announcement materials describing the package).

⁶⁷ NSSF, *NSSF Welcomes ATF Landmark Rulemaking Package* (Apr. 29, 2026) (the package is “the result of months of NSSF working closely with the ATF and DOJ”); Am. Suppressor Ass’n, *ASA Statement on Nomination of Robert Cekada for ATF Director* (Nov. 18, 2025); Nat’l Rifle Ass’n, *ATF Announces New Director, Historic Regulatory Overhaul* (Apr. 30, 2026).

⁶⁸ See, e.g., *Home Box Office, Inc. v. F.C.C.*, 567 F.2d 9, 54–57 (D.C. Cir. 1977); *United States v. Nova Scotia Food Prods. Corp.*, 568 F.2d 240, 251–52 (2d Cir. 1977). The disclosure should include the substance, source, timing, and volume of the undisclosed “recently received inquiries” the NPRM invokes. See 91 Fed. Reg. 24,450.



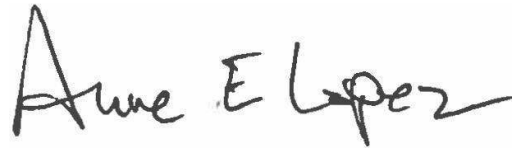
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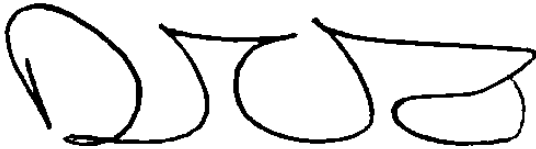
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August 6, 2026

Via Federal eRulemaking Portal

The Honorable Todd Blanche
Acting Attorney General of the United States

Robert Cekada
Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

c/o: ATF Rulemaking Comments
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Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)
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Washington, DC 20226

ATTN: RIN 1140-AB05

Re: Multistate Comment Letter on Revising Non-over-the-Counter Firearms
Transaction Requirements, 91 Fed. Reg. 25216 (May 8, 2026), Docket No. ATF-
2026-0266; ATF 2025R-26P, RIN 1140-AB05

Dear Acting Attorney General Blanche and Director Cekada,

We, the Attorneys General of New Jersey, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington (States) object to this proposal.¹ The Proposed Rule is contrary to law in at least three ways. The Proposed Rule is arbitrary and capricious, failing to properly consider its tremendous public-safety harms. And it suffers from procedural flaws to boot. ATF should withdraw it.

The States object to the Proposed Rule because, if adopted, it would dramatically expand the online gun market in a way that endangers public safety. States bear primary responsibility for protecting the health and safety of the public and have a substantial interest in preventing illegal gun sales. ATF estimates that its Proposed Rule will result in 3.28 million more non-over-the-

¹ Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. 25,216 (May 8, 2026) (Proposed Rule).

counter (NOTC) purchasers per year, including online shoppers.² And the Proposed Rule achieves that result by adopting an unprecedented and erroneous interpretation of the Gun Control Act (GCA). ATF asserts that this historic law a) permits NOTC sales by federal firearms licensees (FFLs) to unlicensed persons subject to federal firearms background checks, and b) that FFLs may “verify” the identities of such gun purchasers remotely. The Proposed Rule would eliminate the requirement for a purchaser to appear in-person for more gun sales than ever before, effectively making NOTC sales an option for *all* gun sales, absent relevant state law. But doing away with in-person requirements for gun sales will have disastrous consequences, by making it more difficult for FFLs to detect suspicious behaviors, warning signs, and other “red flags” that indicate a sale should not be made, including to a potential straw purchaser. And the Proposed Rule’s system for verifying identity without a physical examination of identity documents will create more opportunities for prohibited persons to illegally obtain firearms.

These radical changes would be unlawful, because the Proposed Rule is both contrary to law and arbitrary and capricious under the Administrative Procedure Act (APA). First, the Proposed Rule conflicts with the text of the GCA, the case law interpreting it, and the GCA’s legislative history, all of which establish that most gun sales must occur in-person, that NOTC sales are only permitted in limited circumstances, and that identification verification is required to occur in-person at the FFL’s premises—all requirements Congress adopted in its statutes to protect public safety. Second, the Proposed Rule also fails to consider the myriad of public safety issues it creates by dramatically expanding NOTC sales, including increased opportunities for straw purchasing, unlicensed dealing, and gun trafficking.

The Proposed Rule’s problems are compounded when read in the context of ATF’s larger deregulatory package.³ By separating these interlocking changes, ATF mischaracterizes each as individual, narrow, incremental, and/or administratively modest. But these proposals do not operate in isolation, and the public safety impact is magnified by the combined effect of weakening multiple regulations at the same time. So the Proposed Rule’s facilitation of online gun sales must also be considered in the context of the Administration’s efforts to permit the mailing of firearms through the Postal Service,⁴ narrow federal criminal straw purchasing statutes,⁵ heighten the standard for proving culpability for violations of the GCA by FFLs,⁶ eliminate physical address requirements for identification documents for firearms purchases,⁷ and other Proposed Rules.⁸

The collective impact of these changes would be extremely consequential: millions of guns could be purchased online and mailed to Americans’ doorsteps, circumventing *any* in-person identification verification or interaction with an FFL, and state gun safety laws. That would

² *Id.* at 25222. ATF estimates the resulting “number of applicable retail purchases would be 1.96 million [per year].” *Id.* at 25224.

³ DOJ and ATF Announce Regulatory Reforms to Reduce Burdens on Law-Abiding Gun Owners and Businesses, U.S. Dep’t of Justice, (Apr. 29, 2026), www.justice.gov/opa/pr/doj-and-atf-announce-regulatory-reforms-reduce-burdens-law-abiding-gun-owners-and-businesses.

⁴ Revised Mailing Standards for Firearms, 91 Fed. Reg. 16,601 (Apr. 2, 2026).

⁵ Firearms Transactions and Straw Purchases, 91 Fed. Reg. 24,448 (May 6, 2026).

⁶ Defining “Willfully” for Firearms Violations, 91 Fed. Reg. 25,201 (May 8, 2026).

⁷ Revising Firearms Transaction Record, “Form 4473,” 91 Fed. Reg. 25,432 (May 8, 2026).

⁸ *ATF’s New Era of Reform*, ATF, <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform>. (last updated May 12, 2026).

fundamentally undermine the federal laws DOJ and ATF are charged to enforce, would endanger the public and law enforcement by fueling gun trafficking, and would impose significant law enforcement costs on the States. Acting Attorney General Blanche himself has admitted that Federal Government intends for these changes to usher in a “new era,” which will take the “gun industry [...] forward a mile.”⁹ But these Proposed Rules would take our country dangerously backwards, to the previous levels of violence that motivated Congress to pass the GCA and other federal gun safety laws.

The States urge ATF to withdraw this Proposed Rule. Any changes to how firearm sales can be made must strengthen, not diminish, existing safeguards that protect public safety. That means, at minimum, continuing to require in-person sales and in-person verification of identity by physical examination of identification documents. Public safety requires no less.

I. BACKGROUND.

A. The Gun Control Act of 1968, the Brady Handgun Violence Prevention Act of 1993, and the Bipartisan Safer Communities Act of 2022.

Congress has repeatedly passed bipartisan legislation to combat the very problem that ATF’s Proposed Rule would worsen: the illegal distribution of firearms to dangerous persons. The GCA Act of 1968¹⁰ was enacted to aid federal, state, and local law enforcement in “their fight against crime and violence,”¹¹ and in particular, to address the pervasive problem of interstate firearms trafficking.¹² Core to the GCA is the judgment “that there was a serious problem of individuals going across State lines to procure firearms which they could not lawfully obtain or possess in their own State,” and that absent federal restrictions on firearms trafficking, state and local law enforcement would not be able “to control this traffic within their own borders through the exercise of their police power.”¹³ Congress also sought to curtail the practice of mail-ordered firearms, which was identified as a key mechanism for the illegal acquisition of firearms and their involvement in violent crime.¹⁴ Early in the GCA’s history, a committee chaired by its primary sponsor, Senator Thomas Dodd, conducted a “full-scale inquiry” into mail-order guns, revealing that “criminals, immature juveniles, and other irresponsible persons” used the mail-order system

⁹ *Acting U.S. Attorney General Todd Blanche Outlines Sweeping Second Amendment Overhaul at Trump DOJ*, DealerWire (Apr. 24, 2026), <https://www.thedealerwire.com/features/2026/04/acting-us-attorney-general-todd-blanche-outlines-sweeping-second-amendment-overhaul-at-trump-doj/>.

¹⁰ Pub. L. No. 90-618, 82 Stat. 1213 (1968).

¹¹ *Id.* § 101, 82 Stat. at 1213.

¹² *Huddleston v. United States*, 415 U.S. 814, 824 (1974) (describing Congress’ intent to address the significant role that interstate firearms trafficking plays in contributing to “lawlessness and violent crime in the United States”).

¹³ *Mance v. Sessions*, 896 F.3d 699, 705–06 (5th Cir. 2018) (citing Congress’ findings in the GCA and the Crime Control Act of 1968); *see also Navegar, Inc. v. United States*, 192 F.3d 1050, 1063 (D.C. Cir. 1999) (describing “the widely accepted knowledge that there is a vast interstate market in firearms that makes the states unable to control the flow of firearms across their borders or to prevent the crime inevitably attendant to the possession of such weapons once inside their borders”).

¹⁴ Franklin E. Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, 4 J. Legal Stud. 133, 144–49 (1975).

to obtain firearms in violation of their own local jurisdictions' rules.¹⁵ The GCA took on added urgency and significance after the assassination of President John F. Kennedy in 1963 with a mail-order surplus military rifle, leading to its bipartisan passage in 1968.¹⁶

Key provisions of the GCA, codified at 18 U.S.C. § 922 *et seq.*, included a prohibition on dealers' interstate mail-order firearm sales and tight restrictions on intrastate mail order sales.¹⁷ The GCA also expanded the list of classes of persons prohibited from gun ownership, prohibiting the sale of guns to minors, felons, drug users, and people found mentally incompetent.¹⁸ Initially, dealers were only required to verify their customers' ages via document inspection,¹⁹ and could simply take their customer's word that they had no criminal history or mental condition that would make the transfer illegal. In practice, this honor system permitted felons and other prohibited individuals to walk into a store, lie, and walk out with as many firearms as they could buy.²⁰

Congress closed this loophole in its next major firearm reform, the Brady Handgun Violence Prevention Act of 1993.²¹ Motivated by another presidential assassination attempt, the bipartisan Brady Act created the National Instant Criminal Background Check System (NICS) and imposed a mandatory five-day waiting period between the application to purchase a firearm and the time that the purchase actually transpired.²² Congress intended for the NICS system to prevent convicted felons and other prohibited persons from purchasing firearms through licensed dealers.²³ Although the Brady Act permitted some narrow exceptions to the requirement for a NICS check, such as individuals who possess a NICS-alternative state permit,²⁴ the overall statutory framework created by GCA and the Brady Act's amendments established a mandatory nationwide standard that requires stringent verification of the purchaser's identity and eligibility under federal law.²⁵ Accurate identification verification was critical to this statutory scheme, because "[n]o piece of information is more important under federal firearms law than the identity of a gun's purchaser."²⁶ In 2022, Congress further strengthened the GCA by passing the Bipartisan Safer Communities Act ("BSCA"), which amended the law to more explicitly prohibit straw purchases and illegal gun trafficking.²⁷

¹⁵ *Id.* at 145 (quoting Thomas Dodd, Federal Firearms Legislation, 1961-1968, at 10 (unpublished report prepared for the Subcomm. to Investigate Juvenile Delinquency of the S. Comm. on the Judiciary, 90th Cong., 2d Sess., 1968)).

¹⁶ See William J. Vizzard, *The Gun Control Act of 1968*, 18 Saint Louis Univ. Pub. L. Rev. 79, 8080 (1999).

¹⁷ See *id.* at 87–88; 18 U.S.C. §§ 922(b)(1)–(3), 922(c) (1970).

¹⁸ See Vizzard, *supra* note 16, at 88; 18 U.S.C. § 922(d)(3) (1970).

¹⁹ See Zimring, *supra* note 14, at 152; Treas. Reg. § 178.124(c) (1968).

²⁰ See *id.* at 152.

²¹ Pub. L. No. 103-159, 107 Stat. 1536 (1993).

²² Richard M. Aborn, *The Battle Over the Brady Bill and the Future of Gun Control Advocacy*, 22 Fordham Urban L.J. 417, 418–19 (1995); 18 U.S.C. § 922 (s)–(t) (1993).

²³ See Aborn, *supra* note 22 at 418–419, 428.

²⁴ 18 U.S.C. § 922 (t)(3)(A) (1993). The NICS-alternative state permit system is the subject of another NPRM that would significantly broaden that exception. See Clarifying Exceptions to the Brady Act Background Check Requirement, 91 Fed. Reg. 24,436 (May 6, 2026). The States have written separately to object to that NPRM and explain the risks it presents to public safety.

²⁵ *Abramski v. United States*, 573 U.S. 169, 171–175, 181 (2014) (Congress intended to “curb crime by keeping firearms out of the hands of those not legally entitled to possess them.”).

²⁶ *Id.* at 193.

²⁷ See Jordan B. Cohen, Cong. Rsch. Serv., IF12190, *Gun Control: Straw Purchase and Gun Trafficking Provisions in P.L. 117-159*, 1, (Feb. 9, 2024), <https://www.congress.gov/crs-product/IF12190>; 18 U.S.C. §§ 932–933.

B. The Proposed Rule.

The Proposed Rule significantly expands the ability of FFLs to sell firearms to a person residing in the same state as the FFL but who does not appear in person, which are referred to as “non-over-the-counter” sales.

Previously, NOTC sales were restricted to sales or transfers that were background check-exempt (NICS-exempt transfers), such as when a transferee has a qualifying permit or license.²⁸ ATF would “eliminat[e] the NICS-exempt transfer restriction for NOTC transfers.”²⁹ As a result, the Proposed Rule would permit NOTC transfers even to *unlicensed* persons subject to NICS background checks for the first time, by also permitting remote identity verification and electronic notices to chief law enforcement officers.³⁰ In doing so, the Proposed Rule effectively makes NOTC sales an option for *all* gun sales, absent relevant state law.

ATF acknowledges that NOTC transfers must be “not otherwise prohibited by this chapter” under § 922(c) of the GCA.³¹ It also recognizes § 922(t) prohibits FFLs from “transferring a firearm to an unlicensed person without running a NICS background check and *verifying* the transferee’s identity by examining a valid identification document.”³² However, ATF now asserts that “[w]hile section 922(t) requires the FFL to verify the transferee’s identity document, *that subsection does not require that an FFL verify the identity document only when a transferee is physically present at the FFL’s place of business.*”³³ Thus, ATF advances an entirely new interpretation of the GCA in which identity documents can be “verified” by FFLs in fully remote fashion, without any in-person examination by the FFL.

The Proposed Rule then provides certain criteria to remotely verify transferee identity,³⁴ although—notably—ATF is also proposing to remove the requirement that transferees’ identification documents actually include their residence address.³⁵ ATF proposes that FFLs will use a credential service provider (CSP) that remotely verifies the transferee’s identity by collecting their attribute information and identity evidence and validating it using a range of methods.³⁶ FFLs would then apparently use the information collected by the CSP and compare the identification document during a remote videoconferencing session to initiate a NICS background check.³⁷ FFLs would be responsible for ensuring any third parties they engage for remote identity proofing would apply the Proposed Rule’s standards,³⁸ although the basis for this “responsibility” is unclear from

²⁸ 18 U.S.C. § 922(t)(3); 27 C.F.R. 478.102(d).

²⁹ Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25,218.

³⁰ *See id.* at 25,216.

³¹ *Id.* at 25,217.

³² *Id.* at 25,218 (emphasis added).

³³ *Id.* (emphasis added). According to ATF, “[n]othing in the statute prevents transfers that do require identity verification and a NICS background check from being included within the ambit of section 922(c) NOTC procedures.” *Id.*

³⁴ *See id.* at 25,218–20.

³⁵ *See id.* at 25,217 n. 2. *See* Revising Firearms Transaction Record, “Form 4473,” 91 Fed. Reg. at 25,438.

³⁶ *See* Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25,218–20.

³⁷ *See id.* at 25,219–20.

³⁸ *See id.* at 25,220.

the Proposed Rule and ATF could not even determine if there were CSPs in existence that provide services in accordance with its requirements.³⁹

II. THE PROPOSED RULE IS CONTRARY TO LAW.

The Proposed Rule exceeds DOJ and ATF’s statutory authority and is contrary to law⁴⁰ for three inter-connected reasons. First, ATF’s dramatic expansion of NOTC sales for all firearm sales conflicts with the statute, which “tightly restricts”⁴¹ these sales to “limited circumstances”⁴² for a “small class of buyers subject to extraordinary procedures.”⁴³ Second, the plain text, case law, and subsequent legislative history all show that the GCA’s “verified”⁴⁴ provision requires in-person verification and examination of documents, and prohibits remote identity verification. Third, ATF’s interpretation of the phrase “not otherwise prohibited”⁴⁵ as permitting transfers subject to NICS requirements is also contrary to law. Simply put, a transaction which fails to meet the statutory requirements for “verification” is necessarily “otherwise prohibited.” As a result, the Proposed Rule is contrary to law under the APA. ATF should withdraw it.

A. The Proposed Rule’s Expansion of NOTC Sales to Purchasers Subject to NICS Background Checks Conflicts with the GCA.

Despite decades of restricting NOTC sales to a narrow set of circumstances, ATF now concludes that, contrary to ample prior precedent, the “plain language of section 922(c) [of the GCA] does not limit NOTC [sales] to NICS exempt transfers.”⁴⁶ As a result, the Proposed Rule would effectively make NOTC sales an option for *all* gun sales, absent relevant state law, leading to a projected increase of 3.28 million NOTC purchasers per year.⁴⁷ By doing so, ATF would invert the law enacted by Congress by converting NOTC sales from a narrow exception for certain buyers (as set forth in the GCA) to one available for all gun sales. Such an interpretation is contrary to law.

Federal law generally prohibits FFLs from selling firearms to individuals who do not appear in person at the FFL’s business premises. This in-person requirement ensures FFLs can verify the identity of the purchaser, as required by the GCA.⁴⁸ Separately, federal law prohibits FFLs from selling a firearm to someone “knowing or having reasonable cause to believe that such person” cannot lawfully possess a firearm or intends to commit a felony with that firearm.⁴⁹ So the in-person requirement also allows FFLs to observe suspicious behavior that may indicate criminal intent (such as intent to make a straw purchase) and to identify warning signs that someone may

³⁹ See *id.* at 25224.

⁴⁰ 5 U.S.C. §§ 706(2)(a), (c). Since *Loper Bright Enterprises v. Raimondo*, courts no longer give agencies deference regarding matters of statutory interpretation; they “exercise independent judgment” and determine the “best” statutory interpretation. 603 U.S. 369, 394, 400 (2024).

⁴¹ *Abramski v. United States*, 573 U.S. 169, 181 (2014)

⁴² *Id.* at 172.

⁴³ *Id.* at 182.

⁴⁴ 18 U.S.C. § 922(t)(1)(D).

⁴⁵ 18 U.S.C. § 922(c).

⁴⁶ Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25,217.

⁴⁷ *Id.* at 25222.

⁴⁸ 18 U.S.C. § 922(t)(1)(D).

⁴⁹ 18 U.S.C. § 922(d).

be a danger to themselves or others (such as a purchaser experiencing a mental health crisis or who is under the influence of drugs or alcohol). Based on their observations during this in-person touchpoint, FFLs assess whether they can lawfully sell to a prospective purchaser. The in-person requirement, therefore, provides a critical tool in keeping firearms out of the hands of dangerous individuals or those seeking to commit crime. This important role is why ATF Director Robert Cekada recently stated that “FFLs are our first line of defense in the fight against firearms trafficking.”⁵⁰

The Supreme Court has made clear that ATF’s long-standing position that *in-person* purchases are the general rule under the GCA is the correct interpretation of federal law. In *Abramski v. United States*, the Court reviewed the legality of a conviction under 18 U.S.C. § 922(a)(6) of a former police officer who was paid to purchase a gun for his uncle.⁵¹ The Court read § 922(c) and § 922(t)(1)(C)’s identification requirement as two provisions within the same “detailed scheme to enable the dealer to verify, *at the point of sale*, whether a potential buyer may lawfully own a gun.”⁵² The Court noted that § 922(c) “brings the would-be purchaser *onto the dealer’s ‘business premises’*”⁵³ and “[o]ther provisions *then* require the dealer to check and make use of certain identifying information received from the buyer.”⁵⁴ The Court’s interpretation of the statute could not be more clear: firearm purchases under the GCA almost always must occur in-person.

There is a limited exception to the in-person requirement for firearm sales, but federal law makes clear that it is very narrow in scope, tightly restricting such sales to a small class of buyers subject to extraordinary procedures. § 922(c) describes the conditions under which FFLs may make NOTC sales.⁵⁵ Federal law and current regulations limit NOTC sales to purchasers who are (1) residents of the same state in which the FFL’s business premises are located; and (2) who are exempt from the federal background check requirement (i.e. NICS exempt transfers), such as purchasers with qualified state firearms permits.⁵⁶ The Court in *Abramski* noted that § 922(c)

⁵⁰ Robert Cekada, Responses to Questions for the Record, S. Comm. on the Judiciary Nominations Hearing, 9 (Feb. 2026), https://www.judiciary.senate.gov/imo/media/doc/3502d997-daa5-f550-7914-e7d18cc5b59b/2026-02-04_QFR-Responses_Cekada.pdf.

⁵¹ 573 U.S. 169, 175 (2014).

⁵² *Id.* at 172 (emphasis added).

⁵³ *Id.* (emphasis added).

⁵⁴ *Id.* (citing § 922(t)(1)(C)) (emphasis added). The dissent agreed that “Sections 922(b)(5), (c), and (t)(1) require the dealer to follow certain procedures with respect to that ‘person [seeking to purchase a firearm],’ such as recording his name, *dealing with him in person*, and checking his background.” *Id.* at 196, n. 1 (emphasis added).

⁵⁵ These conditions include: (1) the purchaser submits a sworn statement to the FFL attesting certain information specified in 18 U.S.C. § 922(c)(1); (2) the FFL (prior to shipment or delivery of the firearm) forwards a copy of the sworn statement and a description of the firearm to the chief law enforcement officer of the jurisdiction in which the purchaser resides (and receives return receipt); and (3) the FFL waits at least 7 days following receipt of the notification of the acceptance or refusal of delivery of the statement before shipping or delivering the firearm to the purchaser. *See also Abramski*, 573 U.S. at 181–182.

⁵⁶ 27 CFR § 478.96 limits the option for NOTC transactions to only those persons who are not subject to § 478.102(a). 478.102(a)(5) requires an FFL to verify the identity of an unlicensed transferee by examining a valid identification document and to contact the NICS for a background check prior to transferring a firearm. 18 U.S.C. 922(t)(3) and its implementing regulation at 27 CFR 478.102(d) allow exceptions (NICS-exempt transfers) to conducting a NICS background check if: (1) the transferee has a qualifying permit or license; (2) the transaction involves only transferring National Firearms Act (“NFA”) firearms as approved by the Director; or (3) the Director has certified that running a NICS background check is impracticable.

permits certain firearm sales “to a person who does not appear in person,” but only in “limited circumstances.”⁵⁷ In fact, the Court found that “the point of § 922(c)” is that it “*tightly restricts* the sale of guns ‘to a person who does not appear in person at the licensee’s business premises.’”⁵⁸ That is, “[o]nly a *narrow class* of prospective buyers may ever purchase a gun from afar—primarily, individuals who have *already* had their eligibility to own a firearm verified by state law enforcement officials with access to the NICS database.”⁵⁹ For instance, the Court noted that “[t]he principal exception [to the NICS background check requirement] is for any buyer who has a state permit that has been ‘issued only after an authorized government official has verified’ the buyer’s eligibility to own a gun under both federal and state law.”⁶⁰ As a result, the Court made clear that § 922(c) “*prevents remote sales except to a small class of buyers subject to extraordinary procedures*—again, to ensure effective verification of a potential purchaser’s eligibility.”⁶¹

ATF has proposed an interpretation of the GCA directly at odds with, and foreclosed by, *Abramski*. The Proposed Rule would permit NOTC transfers to unlicensed persons subject to NICS background checks, effectively making NOTC sales an option for all gun sales, absent relevant state law. That contradicts the Supreme Court’s recognition that NOTC sales are only permitted in “limited circumstances” for a “narrow” and “small” class of buyers.⁶² Under binding precedent, only a small group of buyers are actually eligible for NOTC sales, primarily those who had *already* had their eligibility to purchase a firearm determined. The Proposed Rule would expand NOTC sales for individuals who *still* require NICS background checks.

The Court in *Abramski* also specifically foreclosed the possibility that identification verification and background checks could occur remotely for an “absentee” purchaser under the statute. For instance, the Court pointed out that even if the sale in the case had been made directly to the intended recipient (an eligible gun owner), rather than to the physically present straw purchaser, the sale would still “not have complied with § 922(c)’s restrictions on *absentee* purchases.”⁶³ The Court noted that for such an absentee purchaser, the dealer would have “lacked the information needed to verify and record” the purchaser’s “identity and check his background.”⁶⁴ Consequently, the FFL in such a circumstance would have needed to stop the transaction for failure to comply with § 922(c)’s conditions.⁶⁵ Thus, the Court’s reasoning leaves no room for the kind of remote identification verification and background checks for “absentee” purchasers that the Proposed Rule now seeks to implement.⁶⁶

The Proposed Rule’s broad expansion of NOTC sales cannot be reconciled with *Abramski*’s explanation that such sales are tightly restricted to a small class of buyers whose eligibility to purchase firearms has already been determined. And *Abramski* ruled out a sale to an absentee purchaser based on § 922(c)’s restrictions. If ATF wishes to revise the GCA to more

⁵⁷ *Id.* at 172.

⁵⁸ *Id.* at 181 (emphasis added) (internal citation omitted).

⁵⁹ *Id.* at 181 (citing 27 C.F.R. § 478.96(b) (2014); 18 U.S.C. § 922(t)(3)) (emphasis added).

⁶⁰ *Id.* at 172 – 173, n. 1 (citing 18 U.S.C. § 922(t)(3)).

⁶¹ *Id.* at 182 (emphasis added).

⁶² *Id.* at 181 – 182.

⁶³ *Id.* at 189 (emphasis added).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

broadly permit NOTC sales, it is free to encourage Congress to pass new laws to do so. But it is not free to ignore GCA’s language in a way that is contrary to law under the APA, by advancing a reading in a proposed rule that contradicts the GCA’s text, structure, history, and Supreme Court precedent.

B. The GCA Requires In-Person Identification Verification at an FFL’s Premises and Excludes the Proposed Rule’s Remote Identity Proofing Process.

The Proposed Rule violates the GCA’s identification verification provisions, by allowing FFLs to (1) conduct such identification verification remotely by videoconference, and (2) largely outsource this responsibility to CSPs.⁶⁷ The GCA’s text, the case law interpreting that text, and the legislative context of such text all confirm that the GCA requires in-person identification verification at an FFL’s premises. ATF’s interpretation of “verified” as permitting a remote identity proofing process is erroneous and contrary to law.

The plain text of § 922(t)(1) requires in-person identification verification and excludes remote videoconferencing as a substitute. The section states:

a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless— [the Act lists various requirements, including:]

(D) the *transferor* has *verified* the identity of the transferee by *examining* a *valid identification document* (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.⁶⁸

Thus, the statute places the burden on the (1) “transferor” to (2) “verif[y]” the identity of the transferee by (3) “examining” their “valid” “identification document.” These terms collectively create a heightened standard for verification that is aligned with the in-person procedures envisioned by the statute—but conflict with the remote identity proofing described by the Proposed Rule.

Although § 922(t)(1)(D) places the responsibility for verification on the “transferor,” i.e., the FFL, the Proposed Rule unlawfully shifts this critical responsibility away from FFLs to third-party CSP subcontractors. Congress explicitly required that the *transferor* must be the one doing the verification, not a third-party CSP. This is made even clearer by the fact that the Brady Act holds FFLs liable if their processes fail.⁶⁹ CSPs are not contemplated, let alone regulated, by the

⁶⁷ See Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25,228 (proposing amendments to 27 CFR § 478.96, namely the proposed new § 478.96(3)–(4)).

⁶⁸ 18 U.S.C. § 922(t)(1) (emphasis added).

⁶⁹ See 18 U.S.C. 923(e) (revoking the license of a transferor who violates any provision of the chapter); 18 U.S.C. 924(a)(5) (making it a misdemeanor offense to violate 18 U.S.C. § 922, punishable by fines and up to a year of imprisonment.); see also 27 CFR 478.73(a) (revoking or suspending the license of, or imposing a civil fine on, a transferor who violates 18 U.S.C. § 922).

GCA, so shifting responsibility to CSPs makes it easier for FFLs to evade responsibility even if a CSP mistakes a transferee's identity and a firearm goes to a prohibited person.⁷⁰

In addition, § 922(t)(1)(D)'s remaining requirements that FFLs “verif[y]” the identity of the transferee by “examining” their “valid” “identification document” impose a heightened standard of certainty for confirming authenticity. Dictionary definitions of “verified” from the time of the Brady Act’s passage emphasized the high level of certainty the verifier must have to confirm authenticity, essentially equivalent to the certainty one could attest to by legal oath. For instance, Black’s Law Dictionary wrote that “[t]he word ‘verified,’ when used in a statute, ordinarily imports a verity attested by the sanctity of an oath.”⁷¹ Similarly, the Oxford English Dictionary defined “verify” as “to prove by good evidence or valid testimony,” or “to show to be true by demonstration or evidence; to confirm the truth or authenticity of.”⁷² In Webster’s Dictionary, “verify” meant “to prove to be true: establish the truth of : conclusively demonstrate by presentation of facts.”⁷³ Similarly, “examination” was defined as “investigation; search; inspection; interrogation,”⁷⁴ requiring a rigorous review of the items at issue to confirm they are “valid” or authentic.

Allowing identity to be verified by videoconference does not meet § 922(t)(1)(D)'s high standard of certainty for confirming authenticity. Videoconferencing varies widely in its quality and accessibility, especially in areas with poor access to the internet.⁷⁵ If a would-be purchaser's video feed is choppy, grainy, poorly lit, or flawed in any number of other ways, it may be difficult to compare the person on the screen to the person on the identification document. Furthermore, many state drivers' licenses have built-in ID security features like holograms⁷⁶ or pearlescent design overlays⁷⁷ which are difficult or impossible to forge. But videoconferencing makes it difficult to detect such features, making the risk of an FFL being deceived by a forged or otherwise invalid identification document significantly higher. Firearms purchasers could also take advantage of artificial intelligence to falsify their appearance on a videoconference, as described *infra* at 15. Clearly, the proposed remote identification verification process has multiple problems

⁷⁰ This issue would be exacerbated by another proposed rule from ATF, *see supra* note 6, that would heighten the standard of culpability for FFLs by modifying the definition of “willfully” for violating dealers. This is one of many examples demonstrating that these proposed rules are highly interconnected even though ATF advances them as separate proposals, and that their public safety impact can only be fully assessed in totality.

⁷¹ *Verify*, BLACK’S LAW DICTIONARY (6th ed. 1990). In other contexts, “verify” imposes similarly high demands: “[t]o prove to be true,” “to confirm or establish the truth or truthfulness of,” or “to confirm or establish the authenticity of; to authenticate.” *Id.*

⁷² *Verify*, OXFORD ENGLISH DICTIONARY (2d ed., 1989).

⁷³ *Verify*, WEBSTER’S THIRD INTERNATIONAL DICTIONARY (6th ed. 1993).

⁷⁴ *Examination*, BLACK’S LAW DICTIONARY (6th ed. 1990).

⁷⁵ *See generally* Ashton Cain et al., *A Snapshot of Broadband Access in Rural Communities*, OPRE 3 (Dec. 2022), https://acf.gov/sites/default/files/documents/opre/broadband_special_topic_brief_jan2023.pdf (highlighting various areas with “poor access to internet”).

⁷⁶ These include Alaska, Arkansas, Delaware, Florida, Georgia, Hawaii, Idaho, Maryland, Mississippi, New Hampshire, New Jersey, New York, Rhode Island, South Carolina, Texas, and Wyoming. Hannah Ligon, *Which States Have Holograms as a Security Feature on their ID?*, IDSCAN.NET (Apr. 11, 2024), <https://idscan.net/blog/which-states-have-holograms-as-a-security-feature-on-their-id/?srsltid=AfmBOorJxpfGhXl-gYPvY0c3rtcF20zDoxAEEzFpw-3NqWACsSbWoSt>.

⁷⁷ These include Alabama, Arizona, California, Connecticut, Georgia, Illinois, Louisiana, Michigan, Minnesota, Nevada, New Mexico, Ohio, Pennsylvania, Washington, and Wisconsin. *Id.*

that do not exist with in-person verification, confirming that videoconferencing falls far below the standard demanded by the plain text of the statute.⁷⁸

ATF's Proposed Rule is also unlawful because it is an end-run around the Brady Act's exception for buyers in very remote areas. Specifically, Congress enacted § 922(t)(3)(c), which grants the Attorney General the ability to exempt enumerated remote buyers from the NICS and ID verification requirements imposed by § 922(t)(1), providing that:

[(3) § 922(t)(1) shall not apply to a firearm transfer between a licensee and another person if] on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025; (ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and (iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.⁷⁹

This section explicitly allows enumerated remote transferees to be excused from the NICS and identification verification requirements, but only if the Attorney General has certified the impossibility of compliance. This reflects that Congress knew how to make exceptions to the law's requirements, but chose to carefully limit such exceptions. So under the *expressio unius* principle, interpreting § 922(t)(1)(D) to make remote identification the norm rather than a narrow, fact-specific exception, would improperly rewrite the statute.

Lastly, legislative history also confirms that Congress envisioned that § 922's identification verification and background check provisions would necessarily involve the physical presence of the would-be buyer. During the final floor debate over the House version of the bill, both supporters and opponents of the bill referenced the provisions in § 922(t) as applying to in-person firearm transactions. For instance, one cosponsor stated that “[t]he Brady bill will enable us to run a background check [w]hen someone walks to a gun shop.”⁸⁰ Another cosponsor described the bill's

⁷⁸ The ATF notes in its proposed rule that several federal agencies, including the National Highway Traffic Safety Administration (“NHTSA”), the Small Business Administration, and the Internal Revenue Service (“IRS”) have implemented remote identity proofing measures in an attempt to show that it is lawful. Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25,218. However, none of those regulations interpreted a Congressional statute that *requires* identification verification to *permit* videoconferencing. Contrast 49 CFR 580.3 (NHTSA regulation interpreting the Motor Vehicle Information and Cost Savings Act, 49 U.S.C. §§ 32701 *et seq.*, lacking statutory verification requirement); Small Business Administration, Lender and Development Company Loan Programs, SOP 50 10, at Appendix 10 (June 1, 2025), <https://www.sba.gov/document/sop-50-10-lender-development-company-loan-programs> (SBA guidance document interpreting 15 U.S.C. § 634, lacking statutory verification requirement); Internal Revenue Service, Publication 1075, Tax Information Security Guidelines, Section 3.3.8 Public-Facing Systems, at 86 (Nov. 2021), <https://www.irs.gov/pub/irs-pdf/p1075.pdf> (IRS guidance document interpreting 26 U.S.C. § 6103, lacking statutory verification requirement); with 18 U.S.C. § 922(t)(1)(D) (express statutory verification requirement). Aside from this significant legal distinction, the public safety risks from unauthorized persons gaining access to firearms is clearly much higher than gaining access to odometer disclosures, small business loan forms, and tax records.

⁷⁹ 18 U.S.C. § 922(t)(3).

⁸⁰ 139 CONG. REC. H9088-02, H9095 (statement of Rep. Hughes).

provisions as preventing the use of false identity documents during an in-person transaction.⁸¹ Likewise, opponents criticized the provision for excessively burdening law-abiding in-person purchasers.⁸² This evidence, from both supporters and detractors of the bill, further demonstrates that Congress conceived of § 922(t) as necessarily involving in-person verification—just as its high textual standard makes clear.

The Brady Act requires in-person verification of purchasers' identity. Because it would do away with that requirement well beyond Congress's narrow and explicit carve-outs, the Proposed Rule is contrary to law.

C. A Firearms Transaction that Fails to Meet the In-Person Verification Requirement is “Otherwise Prohibited” under the GCA.

Because § 922(t)(1)(D) requires an in-person verification and examination process, a transaction which fails to meet that requirement is unlawful. § 922(c) provides:

In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if [various statutory requirements are met]. (emphasis added).

If the transferor does not meet the identification verification and examination requirements, then “a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter.”⁸³ Thus, transactions to private citizens which fail to meet the verification requirement of § 922(t)(1) are “prohibited” and the exception for selling a firearm to a person who does not appear in person under § 922(c) is not applicable.

There are only three narrow statutory exceptions to § 922(t)(1), which are delineated in § 922(t)(3), including if the transferee has a NICS-exempt state permit.⁸⁴ The current ATF regulation recognizes Congress's intent to treat these cases differently by reading “otherwise prohibited” to include NICS required transfers and to exclude NICS-exempt transfers:

A licensed importer, licensed manufacturer, or licensed dealer may sell a firearm that is *not subject to the provisions of § 478.102(a)* [the NICS background check requirement] to a nonlicensee who does not appear in person at the licensee's business premises if the nonlicensee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee furnishes to the licensee the firearms transaction record, Form 4473, required by § 478.124.⁸⁵

As described *supra* at II.A, Supreme Court precedent reinforces that this is the proper construction of the statute. ATF's Proposed Rule erroneously reads § 922(c)(3) to allow NOTC transactions to

⁸¹ 139 CONG. REC. H9088-03, H9115 (statement of Rep. Woolsey); *see also id.* at H9117–18 (statement of Rep. Hughes).

⁸² *See, e.g.*, 139 CONG. REC. H9088-02, H9092 (statement of Rep. Volkmer); 139 CONG. REC. H9098-03, H9103 (statement of Rep. Hansen); *id.* at H9107 (statement of Rep. Bunning).

⁸³ 18 U.S.C. § 922(t)(1).

⁸⁴ *See supra* n. 56.

⁸⁵ 27 CFR 478.96(b) (emphasis added).

proceed without in-person verification, even though such transactions would be “otherwise prohibited” for the purposes of the statute.

The Proposed Rule violates Congress’s carefully constructed statute by eliminating the distinction between NICS-required and NICS-exempt transfers. Rather than permitting NOTC sales in “limited circumstances”⁸⁶ for a “narrow class of prospective buyers”⁸⁷ such as those with a NICS-alternative permit, the Proposed Rule would expand NOTC sales to include sales to unlicensed persons subject to NICS background checks. As a result, the Proposed Rule would effectively make NOTC sales an option for all firearm sales, facilitating millions of remote firearm sales. This flips Congress’s design on its head, by converting NOTC sales from a limited exception to a general rule. Such an interpretation is foreclosed by the in-person verification requirement imposed by § 922(t)(1)(D), the limited exceptions to this provision under § 922(t)(3), the “not otherwise prohibited” requirement of § 922(c), and the context and structure of our federal firearm laws. Thus, the Proposed Rule is contrary to law under the APA and ATF should withdraw it.

III. THE PROPOSED RULE IS ARBITRARY AND CAPRICIOUS.

The Proposed Rule is independently invalid because it is arbitrary and capricious. Under the APA, agencies must engage in “reasoned decisionmaking”⁸⁸ and consider “the advantages *and* the disadvantages of agency decisions” before acting.⁸⁹ When an agency changes course, ATF must display awareness that it is changing position and must give a reasoned explanation that takes account of the facts and circumstances underlying the prior policy.⁹⁰ And if the prior policy created significant reliance interests, ATF must assess and weigh those interests rather than ignore them.⁹¹

ATF failed to satisfy the arbitrary-and-capricious standard in multiple respects. ATF failed to properly consider important benefits of in-person identification verification: there are significant state law enforcement interests in in-person identification verification and examination, which play an important role in enabling licensed dealers to recognize red flags for straw purchasing, unlicensed dealing, and purchasers who present a threat to themselves or others. Relatedly, ATF failed to properly consider the States’ reliance interests in the existing implementation of the GCA and the Proposed Rule’s conflicts with state laws requiring in-person appearance to purchase firearms. Conversely, ATF also failed to consider the drawbacks of the Proposed Rule, let alone engage in reasoned analysis of them.⁹² For example, ATF devoted no attention to the risks of remote identification verification, such as the increased difficulty of recognizing visual cues for straw purchasing, the risks of purchasers assuming false identities through technological deception (like AI), and other related issues. ATF failed to consider the issues associated with outsourcing identity verification to CSPs, which could hinder capability and dilute responsibility for preventing

⁸⁶ *Abramski v. United States*, 573 U.S. 169, 175 (2014).

⁸⁷ *Id.* at 181.

⁸⁸ *Motor Vehicle Manufacturers Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983)

⁸⁹ *Michigan v. EPA*, 576 U.S. 743, 753 (2015) (emphasis in original).

⁹⁰ *See FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009).

⁹¹ *See, e.g., Dep’t of Homeland Security v. Regents of the Univ. of Calif.*, 591 U.S. 1, 29–30 (2020) (holding that agency’s change in course from policy it deemed was illegal still required reasoned decision-making, including consideration of reliance interests).

⁹² *See State Farm*, 463 U.S. at 43 (it is arbitrary and capricious to “entirely fail[] to consider an important aspect of the problem”).

straw purchasing. The Proposed Rule also failed to consider obvious, less harmful alternatives. Finally, the Proposed Rule failed to consider its impact in the context of other related, proposed changes, such as the Administration's efforts to permit the mailing of firearms by the Postal Service, which could have the cumulative effect of dramatically increasing online gun sales and shipping across the country.

In-person identification verification is critical to enable FFLs to recognize red flags for straw purchasing and/or for unlicensed dealing, which FFLs are legally obligated to act on by refusing the sale.⁹³ Straw purchasing occurs when an individual buys a firearm for someone else, typically someone who is prohibited from purchasing a firearm. Unlicensed dealing is similar, but instead of buying the firearm for a specific person or group of people, the purchaser is buying firearms in bulk, without a particular recipient in mind, in order to illegally re-sell the firearms (without conducting the required background checks). Straw purchasing and unlicensed dealing lead to thousands of weapons being trafficked across the United States. For instance, between 2017 and 2021, straw purchasers trafficked nearly 38,000 firearms and unlicensed dealers trafficked more than 68,000 firearms.⁹⁴ And the consequences are deadly: nearly 24 percent of trafficked guns involving straw purchasing were eventually used in shootings, as were 16 percent of cases involving unlicensed dealers.⁹⁵ Indeed, ATF notes that “[f]irearms obtained through straw purchases are frequently linked to: [v]iolent crime, [d]omestic abuse, [d]rug trafficking, [and g]ang-related activity” and that “[p]reventing straw purchases helps reduce gun violence and protect communities nationwide and abroad.”⁹⁶ Thus, gun trafficking poses a serious danger to the public and law enforcement.

ATF notes that FFL are “a critical line of defense against illegal gun transfers” and that “[r]etailers can help prevent straw purchases by [t]raining employees to recognize red flags.”⁹⁷ ATF lists examples of “warning signs” that can indicate straw purchasing that FFL employees should respond to:

- “One person selects the firearm while another person pays
- A buyer who appears unfamiliar with the firearm
- A purchaser being directed or coached by someone else
- Reluctance to complete required background check paperwork”⁹⁸

⁹³ See 18 U.S.C. § 922(d).

⁹⁴ See ATF, *National Firearms Commerce and Trafficking Assessment (NFCTA), Volume III: Firearms Trafficking Investigations—Part V: Type and Volume of Firearms Trafficked*, (April 2024), 10, <https://www.atf.gov/media/20771/download> (Table TVF-09: Total Number of Cases and Volume of Trafficked Firearms by Trafficking Channel, 2017 – 2021).

⁹⁵ See ATF, *National Firearms Commerce and Trafficking Assessment (NFCTA), Volume III: Firearms Trafficking Investigations—Part IX: Investigation Outcomes*, (April 2024), 5, <https://www.atf.gov/media/14521/download> (Table IO-06: “Total Number of Cases by Trafficking Channel and Use in Shootings, 2017–2021.”)

⁹⁶ ATF, *Don't Lie for the Other Guy*, <https://www.atf.gov/firearms/tools-services-law-enforcement/atf-firearms-programs/dont-lie-other-guy> (last updated Jul. 30, 2026) (citation modified).

⁹⁷ *Id.*

⁹⁸ *Id.* There are other, related visual cues that can indicate straw purchasing, including when a buyer:

- “Returns to the store after failing a background check with a friend to complete the sale.”

Thus, ATF itself recognizes the importance of training and educating FFLs on recognizing signs of straw purchasing, and encourages them to post prominent signage in their store indicating straw purchasing's illegality and associated penalties.⁹⁹

In-person verification and examination of identification is critical for identifying visual “red flags” for straw purchasing. For example, in-person inspection allows the FFL to have full field of vision of the purchaser, allowing them to monitor their conduct and body language during the transaction. The remote videoconferencing options envisioned by the Proposed Rule, on the other hand, pose numerous difficulties for doing so. For example, videoconferencing only provides a more limited field of vision of the purchaser based on the position of their computer or phone's camera, typically placing their hands and surroundings outside the camera's range.

There are clear consequences for not verifying and examining identification in-person. For instance, ATF notes that a key sign of straw purchasing is when a buyer is in communication with a third party during the purchase. For in-person transactions, such communication would be obvious: the FFL employee would physically see the buyer calling, texting, or physically interacting with a third party. But in remote transactions, the buyer could simply keep their hands outside of their camera's frame and message the third party through their computer or phone. They could also turn off their camera and/or mute their microphone, to participate in a separate phone call with a third party. And they could even have the third party physically with them, but just outside of their camera's field of vision. Firearms purchasers could also take advantage of artificial intelligence to falsify their appearance on a videoconference. Deepfakes are “[h]yper-realistic manipulations of audio-visual content,”¹⁰⁰ which can be utilized to fake a person's identity on a videoconference. Research already indicates that people “people cannot reliably detect deepfakes,”¹⁰¹ and there are numerous examples of individuals using AI to forge “synthetic identities” and “mask their appearance in video calls.”¹⁰² So visual cues for straw purchasing that would be immediately obvious in-person could be concealed remotely.

In-person interaction can also be critical to FFLs' ability to detect if someone is experiencing a mental health crisis or showing signs of being a threat to themselves or others. Such in-person interaction is particularly important because firearms are responsible for about 50% of suicides and have the highest case fatality rate of any method.¹⁰³ Studies have shown that firearm

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- “Uses a shopping list to pick which firearm(s) to purchase and does not appear to understand much about the firearm(s) they have selected.”
 - “Communicates with other individuals who are directing or guiding the purchase.”
 - “Uses a credit card in someone else's name to pay for the firearm.”
 - “Pays for the firearm after another individual completed the required paperwork.”

Nick Suplina et al, *The Supply Side of Violence: How Gun Dealers Fuel Firearm Trafficking*, Everytown Research & Policy (Dec. 2, 2025), <https://everytownresearch.org/report/how-gun-dealers-fuel-firearm-trafficking/>.

⁹⁹ *Id.*

¹⁰⁰ Nils Kobis et al, *Foiled Twice: People cannot detect deepfakes but think they can*, iScience (Oct. 29, 2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8602050/>.

¹⁰¹ *Id.*

¹⁰² Amanda Gerut, *North Korean IT worker infiltrations exploded 220% over the past 12 months, with gen AI weaponized at every stage of the hiring process*, Forbes (Aug. 4, 2025), <https://fortune.com/2025/08/04/north-korean-it-worker-infiltrations-exploded/>.

¹⁰³ See Rachel Delafave, *An Empirical Assessment of Homicide and Suicide Outcomes with Red Flag Laws*, 52 Loyola University Chicago L.J. 867, 877-78 (2021), <https://lawcommons.luc.edu/luclj/vol52/iss3/6>. Tragically, 73

retailers are “ideally situated to aid[] in suicide prevention efforts” as they have “*face-to-face* contact with large numbers of community members as part of their usual routine.”¹⁰⁴ FFLs also play an important role in refusing sales to those they suspect may pose a threat to others. For instance, there have been instances in which FFLs refused sales to individuals they suspected harbor violent intentions, helping foil possible mass shootings.¹⁰⁵ Removing any in-person interaction for firearm sales would limit FFLs’ ability to observe and act on visual signs of mental health distress, contributing to a dangerous new status quo in which those intent on harming themselves or others can purchase and receive a firearm without ever interacting with a human being in-person. And observing signs of mental distress is also important for recognizing straw purchasing. For instance, ATF has previously noted that “[i]n some cases, individuals are coerced or manipulated into making a straw purchase. They might be threatened with harm or manipulated through emotional or psychological pressure by those who cannot legally purchase firearms themselves” and “people struggling with addiction or in desperate financial situations find the proposition of making easy money through straw purchases irresistible even if they understand the risks.”¹⁰⁶

Another related problem is that the Proposed Rule provides scant details about the CSPs it tasks with verifying a purchasers’ identification documents. Although the Proposed Rule requires that the CSPs would need to conduct verification according to certain standards,¹⁰⁷ ATF apparently does not know if such CSPs actually exist. ATF could not list a single qualified CSP, noting that “[f]irms offering services that are compliant with the proposed rule do not seem to provide online pricing details.”¹⁰⁸ And ATF acknowledges it “does not know how many CSPs would enter this market and their pricing, nor does it have an accurate model for market demand and anticipated adoption.”¹⁰⁹ Thus, ATF proposes a new approach to permitting firearm sales online without any clear plan for who could actually carry it out.

Worse still, the Proposed Rule provides no details about whether the CSPs would receive any training or possess any responsibilities for preventing straw purchasing and ensuring compliance with gun safety laws. FFLs are responsible for ensuring compliance with the GCA, and can be subject to license revocation, civil and criminal penalties for violations.¹¹⁰ But there is

Americans die by firearms suicide every day. *Issues: Suicide*, Everytown, <https://everytownresearch.org/issue/suicide/> (last visited Aug. 6, 2026).

¹⁰⁴ Thomas Walton & Jennifer Stuber, *Firearm Retailers and Suicide: Results from a Survey Assessing Willingness to Engage in Prevention Efforts*, 50 *Suicide and Life-Threatening Behavior* 83, 84 (2020), https://www.newswise.com/pdf_docs/156528446721836_Stuber%20Walton%20et%20al%20Firearms%20Retailers.pdf (emphasis added).

¹⁰⁵ See *Gun shop owner credited with foiling possible mass shooting*, CBS News (Mar. 29, 2016), <https://www.cbsnews.com/news/ohio-gun-store-owner-john-downs-may-have-prevented-mass-shooting-by-refusing-sale/>.

¹⁰⁶ ATF, *Don’t Lie for the Other Guy*, (last updated Mar. 12, 2026), Internet Archive, <https://web.archive.org/web/20260426200502/https://www.atf.gov/firearms/tools-services-law-enforcement/atf-firearms-programs/dont-lie-other-guy>. ATF apparently removed this content when it recently updated this website on July 30, 2026. Compare with *supra* n. 96.

¹⁰⁷ Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25218-25220.

¹⁰⁸ *Id.* at 25224

¹⁰⁹ *Id.*

¹¹⁰ See 18 U.S.C. § 923(e); 27 CFR 478.73(a); 18 U.S.C. § 924; see also *The Supply Side of Violence*, *supra* note 98 (“[G]un dealers could immediately interrupt the most common forms of gun trafficking simply by paying attention to their customers, being vigilant about obviously suspicious sales, and refusing to sell guns to traffickers. Their

no indication these responsibilities extend to the third party CSPs described in the Proposed Rule.¹¹¹ For example, even if a purchaser presented obvious red flags for straw purchasing during a videoconference with a CSP, such as stating that he intends to make the purchase for another person, the Proposed Rule does not make clear if the CSP would have (1) any training to recognize this as a sign of straw purchasing, (2) any affirmative obligations to report this behavior to the FFL to prevent the firearms transaction, or what recourse is available if the CSP fails to do so. Despite the Proposed Rule's vague assurances that FFL's themselves could still be somewhat involved in the NOTC identification verification process,¹¹² there are troubling, unanswered questions regarding the CSP's role.

ATF estimates the Proposed Rule would lead to 3.28 million more remote firearm purchasers per year.¹¹³ Some portion of these remote sales will inevitably be straw purchases and unlicensed dealing, resulting in potentially thousands more trafficked firearms. And even if state gun safety laws are able mitigate some of the impact of this Proposed Rule,¹¹⁴ the risks for the States would still be heightened given the “predictable pattern” for gun trafficking, in which “[f]irearms are sourced in states with lax gun laws and funneled into target states with tighter restrictions.”¹¹⁵ For example, between 2016 and 2020, 27% of traced guns, or 390,154 guns, were recovered in a different state than where they were originally sold, and 74% of those guns were originally purchased in states without background check laws.¹¹⁶

Relatedly, ATF entirely failed to assess the States' reliance interests in the existing in-person framework.¹¹⁷ States have built their own firearms licensing, sale, and recordkeeping systems on the federal baseline of in-person dealer transactions. Massachusetts, for example, prohibits a dealer from filling any order for a firearm received by mail, telephone, or internet unless the transaction includes in-person presentation of the purchaser's required Massachusetts license

failure to do so is not just a moral disappointment—it is a violation of their obligations as federally licensed gun dealers and, in some cases, potentially criminal.”).

¹¹¹ The closest the proposed rule comes to this point is stating “FFLs [...] would be responsible for ensuring that any CSP they engage to supply remote identity proofing and authentication meets the proposed NIST standards and processes described in this rule.” Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25220. But this only speaks to the process and guidelines for identity proofing, not the important additional obligations described that have been traditionally performed by FFLs in the past.

¹¹² See Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25219-25220 (“After the CSP verifies the transferee's identity, FFLs use the information they collected by examining and comparing the identification document during the videoconferencing session to initiate a NICS background check, as they currently do”).

¹¹³ *Id.* at 25216.

¹¹⁴ See N.J. Admin. Code §§ 13:54-3.12, 13:54-3.13(a)(6); N.J. S.A. § 2C:58-3(a), 3(b), 3(f), 3(i)); NJ Rev Stat §§ 2C:58-2(a)(7), 2C:58-3(i); N.J. Admin. Code § 13:54-1.9(a)); N.J. S.A. § 2C:39-6(g); FIREARMS FAQ's – New Jersey State Police, <https://njsp.njoag.gov/firearms-faqs/> (“You may only ship a firearm to a Federally Licensed Firearms dealer (FFL) for sale or repair”). Mass. Gen. Laws ch. 140, § 123(b), (k) (Massachusetts law independently requires all dealer transactions to occur at the dealer's licensed premises and bars dealers from filling remote orders unless the purchaser presents the required license, card, permit, or documentation in person before the firearm is sold, delivered, or otherwise transferred). Cal. Penal Code 28180 (FFLs required to obtain purchaser information from the magnetic strip on the purchaser's driver's license); Cal. Penal Code 28160(a)(33) (salesperson required to witness purchaser's signature); Cal. Penal Code 28160(b) (requires purchaser's right thumbprint).

¹¹⁵ *The Supply Side of Violence*, *supra* note 98.

¹¹⁶ Everytown Research and Policy, *Five Things to Know About Crime Guns, Gun Trafficking, and Background Checks* (May 24, 2021), <https://everytownresearch.org/report/five-things-to-know-about-crime-guns/>.

¹¹⁷ See *Regents of the Univ. of Calif.*, 591 U.S. at 29–30; *Fox Television Stations*, 556 U.S. at 515.

before any sale, delivery, or transfer; requires that all dealer transactions be conducted at the dealer's licensed business premises; requires the dealer, before any transfer, to verify that the person presenting a license or card is its lawful holder; and requires dealers to record every firearm transaction, subject to police inspection.¹¹⁸ In-person examination at the point of sale is also what enables dealers to comply with the GCA's residence-based restrictions, which turn on reliably knowing who—and where—the purchaser is.¹¹⁹ The Proposed Rule nowhere acknowledges—much less assesses and weighs—these State systems, or the added investigative and enforcement burdens the States will bear when remote sales completed under the laxer laws of other states are trafficked into States like New Jersey, California, and Massachusetts.

ATF also failed to consider obvious, less-harmful alternatives—an independent hallmark of arbitrary agency action.¹²⁰ The Proposed Rule's alternatives analysis considered only a no-action baseline, an expansion of the pool of verification vendors, and the rule as proposed.¹²¹ ATF never considered, among other options: (1) retaining the longstanding NICS-exempt limitation on NOTC transfers while reducing burdens through the statute's recently enacted electronic CLEO-notification procedures;¹²² (2) relying on the existing, lawful practice by which a purchaser buys a firearm remotely and completes the transfer—including in-person identification verification and the NICS check—at a conveniently located FFL near the purchaser's residence, an option that already provides the convenience ATF invokes while preserving every in-person safeguard; (3) piloting any remote-verification process on a limited basis, with mandatory audits, retention of recorded verification sessions, and public reporting, before nationwide implementation; and (4) at a minimum, requiring biometric-pathway verification, ATF registration and oversight of CSPs, and mandatory training and reporting obligations for CSPs concerning indicators of straw purchasing. The States do not offer these alternatives as substitutes for withdrawal; they identify them because the APA required ATF to consider them. Its failure to do so is an independent reason the Proposed Rule is arbitrary and capricious.

The risks from this Proposed Rule are even more serious when considering its interaction with others proposed by the Administration, including in ATF's "New Era of Reform" package.¹²³ For instance, the Postal Service has issued a Proposed Rule that purports to partially repeal 18 U.S.C. § 1715 to allow individuals to receive pistols, revolvers, shotguns and rifles via the U.S. Mail without using a licensed retailer as an intermediary¹²⁴—even when such shipments violate state laws restricting the possession and transfer of firearms.¹²⁵ Paired with this Proposed Rule, the result will be millions of online firearm purchases received by mail, circumventing *any* in-person identification verification by an FFL and state gun safety laws. Consequently, these Proposed

¹¹⁸ Mass. Gen. Laws ch. 140, § 123(b), (f), (h), (k), as amended by St. 2024, c. 135, § 37; *see also* 803 CMR 10.00 (electronic recording of gun transactions).

¹¹⁹ *See* 18 U.S.C. § 922(b)(2)–(3).

¹²⁰ *State Farm*, 463 U.S. at 46–51; *see also Regents of the Univ. of Calif.*, 591 U.S. at 30 (agency must consider obvious alternatives short of full rescission).

¹²¹ Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25225.

¹²² 18 U.S.C. § 922(c)(2)(A)(ii) (permitting notice to the chief law enforcement officer by "verified electronic notification").

¹²³ *ATF's New Era of Reform*, *supra* note 8.

¹²⁴ Revising Mailing Standards for Firearms, 91 Fed. Reg. 16601 (Apr. 2, 2026).

¹²⁵ *AG Davenport, States Oppose U.S. Postal Service Rule Flouting Federal Gun Law*, New Jersey Attorney General's Office (May 4, 2026), https://www.njoag.gov/wp-content/uploads/2026/05/2026-0504_Multistate-Comment-on-Proposed-Amendments-to-Pub-52.pdf.

Rules could supercharge the online gun industry and lead to huge increases in the number of mailed firearms, with enormous implications for public safety.¹²⁶ These risks will not only impose significant costs and burdens on state and local law enforcement, but also threaten States' sovereign and fundamental interests in the integrity and enforcement of their laws.

ATF has also issued other rule proposals that could amplify the dangerous effects of this one. For instance, ATF has proposed other rules that would narrow federal criminal straw purchasing statutes¹²⁷ and heighten the standard for proving culpability for violations of the GCA by FFLs.¹²⁸ As a result, the risks created by this Proposed Rule would be compounded by the new difficulty for proving straw purchasing or willful facilitation of straw purchasing by FFLs. And ATF is also proposing eliminating physical address requirements for identification documents for firearms purchases,¹²⁹ so the identity verification occurring under this Proposed Rule could end up omitting important information. This Proposed Rule's consequences for firearm trafficking alone are concerning, but the picture is even more dire when paired with ATF's deregulatory package as a whole—which is a wholesale administrative revision of federal laws that have helped protect the public for decades.

ATF failed to consider *any* of the public safety costs associated with this Proposed Rule, nor did it consider the important reliance interests in the agency's prior interpretation of the GCA. And ATF divided the administrative record in a way that makes the whole package harder to see, obfuscating an evaluation of the collective impact of its proposed changes. The APA does not permit this kind of compartmentalized decision-making. An agency must “examine the relevant data” and provide a reasoned explanation that shows a “rational connection between the facts found and the choice made.”¹³⁰ Here, the actual consequence of this Proposed Rule and others is a coordinated weakening of federal firearm laws that will facilitate the growth of an online firearm shipping industry and increase firearm trafficking. As a result, ATF's actions threaten public safety and the States' ability to protect their citizens and enforce their laws. For these reasons, the Proposed Rule is arbitrary and capricious.

IV. PROCEDURAL DEFECTS COMPOUND THESE SUBSTANTIVE FAILURES.

The Proposed Rule suffers from several procedural defects that are independent of, and compound, their substantive shortcomings. The APA requires a transparent process that permits meaningful public participation, discloses the actual basis for agency action, and allows affected sovereigns and stakeholders to respond to the materials and assumptions that shaped the proposal. Here, the available record raises serious concerns that ATF failed to consult with the States, despite obvious federalism implications, and relied on undisclosed industry input. These are not technical defects. They go to the integrity of the rulemaking process and cannot be cured through post hoc explanations in a final rule.

¹²⁶ For more detailed discussion of the risks with the Postal Service mailing firearms, *see AG Davenport, States Oppose U.S. Postal Service Rule Flouting Federal Gun Law*, *supra* note 125. This Proposed Rule would accentuate those risks, by further facilitating online gun sales and remote shipping options, along with the other risks described in this comment letter.

¹²⁷ Firearms Transactions and Straw Purchases, 91 Fed. Reg. 24,448.

¹²⁸ Defining “Willfully” for Firearms Violations, 91 Fed. Reg. 25,201.

¹²⁹ Revising Firearms Transaction Record, “Form 4473,” 91 Fed. Reg. 25,432.

¹³⁰ *State Farm*, 463 U.S. at 43 (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

A. ATF Failed to Conduct Required State Consultation Under Executive Order 13132.

Executive Order 13132 defines “policies that have federalism implications” to include regulations and policy actions that have “direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”¹³¹ And §6(a) of that order requires every agency to maintain an accountable process to ensure “meaningful and timely input by State and local officials” in developing regulatory policies with federalism implications.¹³² The Proposed Rule and others related to it could directly affect state law enforcement and public-safety systems.

ATF’s determination that the Proposed Rule does not warrant a federalism summary impact statement is inadequate and erroneous. The question is not whether the Proposed Rule explicitly commands States to spend money or preempts their state laws. Executive Order 13132’s inquiry is broader: whether the proposal has substantial direct effects on the States or on the federal-state allocation of public safety responsibility. Executive Order 13132 and the OMB implementing guidance require more than a conclusory certification. In fact, the OMB guidance explains that agencies must have an accountable process for “meaningful and timely input” by state and local officials, that the process must involve state and local officials or their representative national organizations, and that consultation should occur “early in the process of developing the proposed regulation.”¹³³ For rules that trigger the specific Section 6(b) or Section 6(c) procedures, the agency must also provide a federalism summary impact statement describing prior consultation, state and local concerns, and the extent to which those concerns were met.¹³⁴

ATF ignored that process. The Proposed Rule does not identify any meaningful or timely consultation with the States, describe which state or local officials were consulted, summarize any concerns raised by those officials, or explain how ATF considered those concerns before making this Proposed Rule. Instead, the Proposed Rule presumes that no consultation was required. That conclusion required a reasoned explanation, particularly given the proposal’s effects on States’ law enforcement and public-safety responsibilities. If ATF engaged in some informal or limited communications with state or local officials, the Proposed Rules still failed to disclose the nature of those communications in a way that would allow states and the public to evaluate whether ATF obtained the “meaningful and timely input” required by Executive Order 13132.¹³⁵ The Proposed Rule therefore deprived States of both the consultation process to which they were entitled and the notice necessary to respond.

The omission is especially serious because the public record suggests that DOJ and ATF consulted closely with regulated industry stakeholders while excluding state and local law

¹³¹ Exec. Order No. 13,132, § 1(a), 64 Fed. Reg. 43,255, 43,255 (Aug. 10, 1999).

¹³² *Id.* § 6(a), 64 Fed. Reg. at 43,257.

¹³³ Off. of Mgmt. & Budget, Exec. Off. of the President, M-00-02, Guidance for Implementing E.O. 13132, “Federalism”, 4–6 (1999).

¹³⁴ Exec. Order No. 13,132, § 6(b)–(c).

¹³⁵ *Id.* at § 6(a).

enforcement partners who bear the public safety consequences of firearm trafficking.¹³⁶ Executive Order 13132 does not permit ATF to consider industry burden while ignoring state public-safety reliance.

On this record, ATF's Executive Order 13132 determination is not supportable. ATF should withdraw the Proposed Rules and, at minimum, consult with affected state and local officials, including the undersigned, before re-proposing the Proposed Rule.

B. ATF Has Not Disclosed the Substance of Outside Influence That Appears to Have Shaped the Proposed Rule.

ATF's administrative record contains a direct and material tension concerning the development of this proposal. In materials accompanying the rulemaking package, ATF states that "[n]one of these rules were drafted directly or indirectly by any member of the gun industry."¹³⁷ Yet DOJ and ATF's own public communications, and the contemporaneous statements of industry organizations, describe a materially different process.

At the public announcement of the rulemaking package, DOJ and ATF said the review leading to these Proposed Rules "included consideration of industry and expert feedback and concerns,"¹³⁸ and ATF's "New Era of Reform" materials characterize the Proposed Rules as part of "a landmark package of proposed and final rules" built on "partnership with the firearms industry," "trust and collaboration," and "working with federal firearms and explosives licensees as partners."¹³⁹ That message was reinforced at the announcement itself: standing before representatives of the National Shooting Sports Foundation, the National Rifle Association, the American Suppressor Association, and the Gun Owners of America, ATF Director Cekada explained that the Bureau's year-long review considered "licensee feedback," involved conversations with "stakeholders," and produced a package grounded in "transparency, accountability, and partnership."¹⁴⁰ Acting Attorney General Blanche admitted that the Federal Government's firearms policy would benefit the "gun industry" by moving it "forward a mile": "Going back to the Reagan administration, the gun industry takes two steps forward. And then a Democrat comes in and takes us eight steps back ... We're not going to take two steps forward. *We're going to go forward a mile.*"¹⁴¹ These statements are not consistent with an administrative record that denies that industry directly or indirectly shaped the rules. By his own statement, Acting Attorney General Blanche considers "we" to include "the gun industry" as opposed to the federal government or the people it serves.

¹³⁶ See *infra* at 21-24.

¹³⁷ ATF, *ATF Launches New Era of Reform: Questions and Answers* (2026), www.atf.gov/rules-and-regulations/atf-launches-new-era-reform/questions-and-answers (last visited Aug. 3, 2026).

¹³⁸ DOJ and ATF Announce Regulatory Reforms, *supra* note 3.

¹³⁹ ATF's New Era of Reform, *supra* note 8.

¹⁴⁰ Acting AG Blanche and Acting ATF Director Cekada Announce Changes to ATF Regulations, U.S. Dept. of Justice – Office of Public Affairs, at 11:23:48 (DOJ Live, streamed Apr. 29, 2026), <https://www.justice.gov/opa/video/acting-ag-blanche-and-acting-atf-director-cekada-announce-changes-atf-regulations>.

¹⁴¹ Acting U.S. Attorney General Todd Blanche Outlines Sweeping Second Amendment Overhaul at Trump DOJ, *supra* note 9 (emphasis added).

Industry representatives have likewise confirmed their substantive involvement in this rulemaking process. The National Shooting Sports Foundation, the firearms industry's trade association, claimed that the package was "the result of months of NSSF working closely with the ATF and DOJ" to identify and revise regulations, and that package included priorities "NSSF has long championed."¹⁴² The American Suppressor Association stated that it had "worked closely with Robert Cekada" to ensure gun owners had "a seat at the table in shaping policy."¹⁴³ The National Rifle Association described the package as reflecting its own recommendations, stating that it had submitted a memorandum to DOJ with "some 50 actions" the Executive Branch could take, that the administration had already acted consistently with "at least half" of those suggestions, and that DOJ and ATF's Proposed Rules "continued this momentum" by addressing matters requiring formal rulemaking.¹⁴⁴ Gun Owners of America also claimed credit for the package, stating that it had "fought the Department of Justice for rule changes by ATF," that it "appeared at the Department of Justice for the signing of 34 new ATF Rules," and that it had been "lobbying the Justice Department for months . . . hoping to change ATF policy."¹⁴⁵

That presents a significant legal problem. While informal rulemaking does not prohibit *ex parte* contacts, significant communications presenting new data or substantial argument must be reflected in the public record so that affected parties may respond and reviewing courts may assess the basis for the agency's decision—not to forbid such discussions, but to make sure the record can tell the whole story.¹⁴⁶ In other words, consistent with the role of reasoned decision-making and judicial review, an agency may not rely on material unavailable to commenters while denying them an opportunity to test, examine, and criticize the basis for agency action.¹⁴⁷ So if DOJ and ATF relied on industry-supplied information—including, but not limited to, burden estimates, factual assertions, legal memoranda, enforcement anecdotes, draft language, or policy recommendations—those materials necessarily formed part of the practical basis for the proposal and should have been placed in the record for the public to be able to meaningfully respond.

¹⁴² *NSSF Welcomes ATF Landmark Rulemaking Package*, Nat'l Shooting Sports Found. (Apr. 29, 2026), <https://www.nssf.org/articles/nssf-welcomes-atf-landmark-rulemaking-package/>; see also Stephen Gutowski, *How ATF's New Regulations Change the Gun Industry (Ft. NSSF's Larry Keane)*, The Reload, at 04:42 (May 10, 2026), <https://thereload.com/podcast-how-atfs-new-regulations-change-the-gun-industry-ft-nssfs-larry-keane/> (Larry Keane, NSSF's Senior Vice President and General Counsel, claimed that ATF reached out to NSSF "as they were working on the drafts to get perspective from the industry.").

¹⁴³ *ASA Statement on Nomination of Robert Cekada for ATF Director*, Am. Suppressor Ass'n, (Nov. 18, 2025), <https://americansuppressorassociation.com/news/asa-statement-on-nomination-of-robert-cekada-for-atf-director>.

¹⁴⁴ *ATF Announces New Director, Historic Regulatory Overhaul*, Nat'l Rifle Ass'n, (Apr. 30, 2026), <https://www.nrila.org/articles/20260430/atf-announces-new-director-historic-regulatory-overhaul>.

¹⁴⁵ Erich Pratt, *Here's What GOA Did for Your Gun Rights This Week*, Gun Owners of Am. (May 2, 2026), <https://www.gunowners.org/na040226/>.

¹⁴⁶ See *Sierra Club v. Costle*, 657 F.2d 298, 401–04 (D.C. Cir. 1981) (holding that agency decision-making ultimately must rest on "evidence in the record" and cannot depend on undisclosed communications that evade meaningful scrutiny).

¹⁴⁷ See, e.g., *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 393–94 (D.C. Cir. 1973) (holding "it is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, [in] critical degree, is known only to the agency."); *United States v. Nova Scotia Food Prods. Corp.*, 568 F.2d 240, 251–52 (2d Cir. 1977) (holding that the agency must disclose "pertinent research material" relied upon "so as to elicit comments that probe the fundamentals."); *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236–40 (D.C. Cir. 2008) (vacating a rule where the agency "fail[ed] to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.").

The concern is heightened because the constituency apparently involved here is not a neutral technical advisor but the same regulated industry that stands to benefit directly from the proposed changes. The DOJ and ATF announcement describes the package as “regulatory reforms to reduce burdens on law-abiding gun owners and businesses,”¹⁴⁸ and the National Shooting Sports Foundation described the package as addressing regulations that had “increased compliance costs for the industry.”¹⁴⁹ Notably, members of President Trump’s family could stand to benefit financially from the Proposed Rule based on their business interests in the firearms industry. The President’s son, Donald Trump Jr., is on the board of directors of GrabAGun,¹⁵⁰ an online gun company described as the “Amazon of guns,” which has stated it is “uniquely positioned to capitalize” on this Proposed Rule.¹⁵¹ Where an agency develops deregulatory proposals with substantial assistance from regulated parties while shielding the substance of that assistance from public scrutiny, the resulting asymmetry undermines the fairness and legitimacy of the rulemaking process.

Nor can DOJ and ATF cure the defect by making disclosures in the final rule. Commenters cannot meaningfully respond to arguments, assumptions, data, or proposed language that were never disclosed during the comment period. Once the comment period closes, the opportunity to test those materials has already been lost.¹⁵² DOJ and ATF should therefore place into the record all materials—from both before and after release of the Proposed Rule—concerning communications with industry representatives, trade associations, advocacy organizations, Members of Congress or their staff, and other stakeholders, including the President’s son, concerning the Proposed Rule. That disclosure should include meeting dates, attendees, summaries, draft text, burden estimates, factual assertions, communications, and legal memoranda.

¹⁴⁸ DOJ and ATF Announce Regulatory Reforms, *supra* note 3.

¹⁴⁹ NSSF Welcomes ATF Landmark Rulemaking Package, *supra* note 142.

¹⁵⁰ GrabAGun, Board of Directors, <https://investors.grabagun.com/governance/board-of-directors/default.aspx>.

¹⁵¹ GrabAGun, *GrabAGun Digital Holdings Reports First Quarter 2026 Results* (May 13, 2026), <https://investors.grabagun.com/news/news-details/2026/GrabAGun-Digital-Holdings-Reports-First-Quarter-2026-Results/default.aspx> (“The ATF has proposed amendments that could allow remote firearm transfers with secure identity verification and direct-to-home delivery under an approved framework, and we believe GrabAGun is uniquely positioned to capitalize on this potential opportunity. For over 15 years, we have invested in building the digital infrastructure, compliance systems and regulatory expertise required to operate in this complex regulatory environment at scale. Few companies have spent that long building the operational foundation that this kind of regulatory evolution would demand.”); *See also* Chip Brownlee, *Todd Blanche, Donald Trump Jr. Face Questions Over Direct-to-Door Gun Rule*, *The Trace* (Jul. 15, 2026), <https://www.thetrace.org/newsletter/todd-blanche-donald-trump-jr-grabagun-atf-direct-to-door-gun-rule/> (citing a July 14 letter from Senators Blumenthal and Murphy, available at <https://www.documentcloud.org/documents/28476288-murphy-blumenthal-blanche-letter/>, raising concerns about GrabAGun’s potential use of inside information, given that “[i]t appears that GrabAGun had information about the potential change in the regulatory landscape and made a series of business decisions to capitalize on the moment.”); Brian O’Connell, *Trump Jr.’s New Venture Aims to Sell Firearms Via the mail — And a Proposed Federal Rule Change Could Make That Happen*, *Yahoo!Finance* (Jul. 9, 2026), <https://finance.yahoo.com/economy/policy/articles/trump-jr-venture-aims-sell-174500165.html>; Eric Cortellessa, *Bringing a Gun Company Public, Donald Trump Jr. Seeks to Grow the MAGA Economy*, *Time* (Jul. 17, 2025), <https://time.com/7303326/grabagun-stock-donald-trump-jr/>; *GrabAGun, a Mobile-Focused Online Firearms Retailer Defending the Second Amendment, to Become a Public Company through a Business Combination with Colombar Acquisition Corp. II*, *Businesswire* (Jan. 6, 2026), <https://www.businesswire.com/news/home/20250106730864/en/GrabAGun-a-Mobile-Focused-Online-Firearms-Retailer-Defending-the-Second-Amendment-to-Become-a-Public-Company-through-a-Business-Combination-with-Colombar-Acquisition-Corp.-II>.

¹⁵² *See* 5 U.S.C. § 553(c).

DOJ and ATF should then reopen the comment period for at least 90 days. Otherwise, any final rule will rest on a procedurally defective record.

C. ATF Has Not Complied with Executive Order 12866.

Executive Order 12866 requires an agency to assess the costs and the benefits of a regulatory action and to proceed only based on a reasoned determination that the benefits justify the costs. But here, ATF's analysis is one-sided. ATF quantifies the travel-time savings it projects for remote purchasers while treating the public-safety, investigative, and enforcement costs as though they are zero. The Regulatory Impact Analysis monetizes \$103.7 million in projected annual benefits—almost entirely the value of purchasers' avoided travel time. At the same time, ATF conceded that it “does not know how many CSPs would enter this market and their pricing, nor does it have an accurate model for market demand and anticipated adoption.”¹⁵³ And ATF assigned no value to any public-safety, investigative, or enforcement cost. An agency acts arbitrarily when it credits speculative or comparatively modest private savings while declining even to estimate the harms for public safety. That defect is not confined to one rule; it runs through the “New Era of Reform” package,¹⁵⁴ and is compounded by ATF's refusal to analyze the rules' cumulative effects.

* * *

The States urge ATF to withdraw the Proposed Rule, or, in the alternative, postpone any effective date under 5 U.S.C. § 705 pending judicial review.

Sincerely,



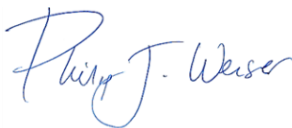
Jennifer Davenport
Attorney General of New Jersey



Kristin K. Mayes
Attorney General of Arizona



Rob Bonta
Attorney General of California



¹⁵³ Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25221–24.

¹⁵⁴ See *ATF's New Era of Reform*, *supra* note 8.

Philip J. Weiser
Attorney General of Colorado

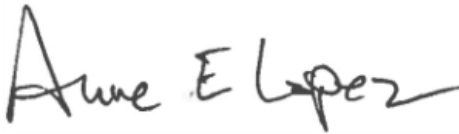


Kathleen Jennings
Attorney General of Delaware

William Tong
Attorney General of Connecticut



Brian L. Schwalb
Attorney General for
the District of Columbia



Anne E. Lopez
Attorney General of Hawai'i



Kwame Raoul
Attorney General of Illinois



Aaron M. Frey
Attorney General of Maine



Anthony G. Brown
Attorney General of Maryland



Andrea Joy Campbell
Attorney General of Massachusetts



Dana Nessel
Attorney General of Michigan



Keith Ellison
Attorney General of Minnesota



Aaron D. Ford
Attorney General of Nevada



Letitia James
Attorney General of New York



Raúl Torrez
Attorney General of New Mexico



Dan Rayfield



Peter F. Neronha

August 6, 2026

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Attorney General of Oregon

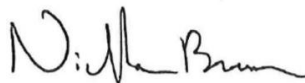
A handwritten signature in blue ink that reads "Charity R. Clark". The signature is written in a cursive style with a large initial "C".

Charity R. Clark
Attorney General of Vermont

Attorney General of Rhode Island

A handwritten signature in black ink that reads "Jay Jones". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

Jay Jones
Attorney General of Virginia

A handwritten signature in black ink that reads "Nick Brown". The signature is written in a cursive style with a large initial "N".

Nick Brown
Attorney General of Washington



ILLINOIS ATTORNEY GENERAL
KWAME RAOUL

August 4, 2026

Via Federal Rulemaking Portal (Regulations.gov)

The Honorable Todd Blanche
Acting Attorney General of the United States

Robert Cekada
Director of the Bureau of Alcohol, Tobacco,
Firearms and Explosives

c/o: ATF Rulemaking Comments
Mail Stop 6N-518, Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

ATTN: RIN 1140-AA98

Re: Removing Factoring Criteria for Firearms With Attached “Stabilizing Braces,” 91 Fed. Reg. 24,453 (May 6, 2026), Docket No. ATF–2026–0335; ATF No. 2025R–11P

Dear Acting Attorney General Blanche and Director Cekada:

We, the Attorneys General for the States of Illinois, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington (“the States”), write to provide comments on the Bureau of Alcohol, Tobacco, Firearms, and Explosives’ (“ATF”) Proposed Rule Removing Factoring Criteria for Firearms With Attached “Stabilizing Braces.”¹ The Proposed Rule seeks to rescind a prior rule, 88 Fed. Reg. 6478, but offers nothing related to stabilizing braces in its place. As the chief legal

¹ Removing Factoring Criteria for Firearms With Attached “Stabilizing Braces,” 91 Fed. Reg. 24,453 (May 6, 2026) (to be codified at 27 CFR Parts 478 and 479).

officers for our respective States, the undersigned Attorneys General oppose the Proposed Rule, which, if finalized, would severely harm the States and their residents, and violate federal law.

The Proposed Rule's rescission without replacement makes it easier for individuals to possess short-barreled rifles (SBRs), either by purchasing pistols with pre-attached braces, or converting pistols by attaching braces after purchase. Short-barreled rifles are much easier to conceal than a standard rifle, while retaining the capacity to deploy high-velocity, rapid-fire rounds with tremendous accuracy from a great distance. They have been used repeatedly in mass shootings. It is beyond dispute that *certain* pistols with attached stabilizing braces can constitute an SBR under federal law.²

Currently, SBRs are regulated by federal law. Those in possession of SBRs must register the weapon and submit to a background check. But a stabilizing brace makes it possible to convert an unregulated pistol into an SBR, entirely outside this system of federal regulation. In the Proposed Rule's "Benefits" section, the ATF admits that rescinding the prior rule regarding classification of such devices "could have a qualitative disbenefit to public safety (*i.e.*, adverse impacts)."³ This is an understatement. The adverse impacts on public safety as a result of the Proposed Rule are unfortunately certain—stabilizing brace-converted SBRs have been used in mass shootings, including in the Covenant School shooting in Nashville, Tennessee, and the 2019 mass shooting in Dayton, Ohio that lasted 30 seconds but killed 9 people and wounded at least 14 others. The States have a substantial interest in reducing gun violence by keeping particularly dangerous firearms off the streets and some States have their own regulations regarding SBRs.⁴ The Proposed Rule that increases the convertibility of pistols to SBRs would harm that interest and violate the Administrative Procedure Act, as described below.

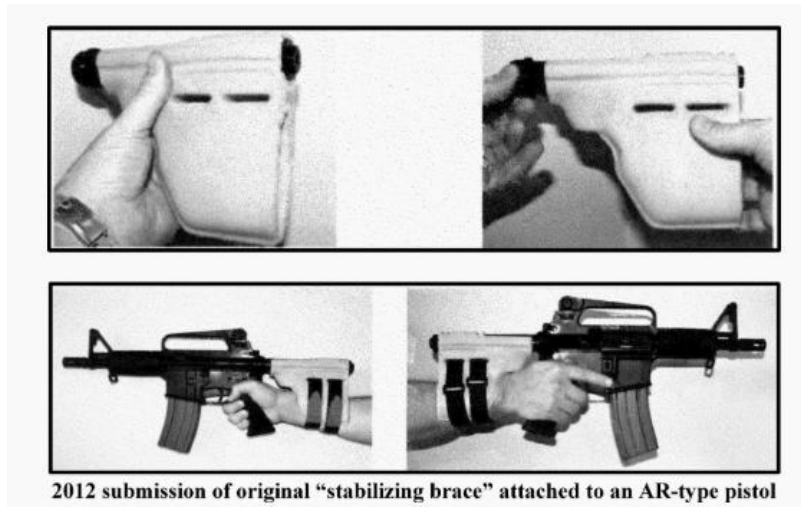
I. Introduction

The Proposed Rule relates to the classification of firearms with attached "stabilizing braces" under federal law. A stabilizing brace is a rearward attachment for a pistol. The device was originally marketed as intended to assist persons with disabilities and others who lack sufficient grip strength to control heavy pistols. A picture of a stabilizing brace used for this purpose is shown below:

² See, e.g., *Watterson v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 4:23-CV-00080, 2024 WL 897595, at *18 (E.D. Tex. Mar. 1, 2024) ("Because a pistol equipped with a stabilizing brace subject to the Final Rule effectively becomes a short-barreled rifle, it too likely becomes a dangerous and unusual weapon not protected by the Second Amendment."); *Getz v. Sturm, Ruger & Co., Inc.*, No. 3:23-CV-1338 (RNC), 2024 WL 1793670, at *3 (D. Conn. Apr. 25, 2024) ("Ruger's AR-556 Pistols with SBA3 braces are 'near-duplicates' of short-barreled rifles that Ruger manufactured for the law enforcement market, the AR-556 MPR.")

³ 91 Fed. Reg. at 24459–60.

⁴ See, for example, Cal. Penal Code §§ 17170; 33215.



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By 2014, ATF began to see these “braces” being used to fire weapons from the shoulder and new designs included characteristics common to shoulder stocks.⁶ These new designs could also be used to press the firearm up against the shoulder, such that the pistol could be fired like a rifle. Indeed, given the surface area of the back of a stabilizing brace, a stabilizing brace equipped pistol can be used almost identically to a rifle, as shown below:



Pistol with attached “stabilizing brace” (top) compared to rifle (bottom), both marketed by the same company

7

Under the National Firearms Act of 1934 (the “NFA”) and the Gun Control Act of 1968 (the “GCA”), where a firearm is “designed or redesigned, made or remade, and intended to be fired from the shoulder,” additional regulation may apply. Specifically, a short-barreled rifle is subject to certain regulatory requirements, including the requirement that the firearm be registered with the federal government and the requirement that the purchaser undergo a background check. The issue of stabilizing braces led to inconsistent enforcement of the requirements of the NFA and GCA

⁵ See 88 Fed. Reg. at 6483.

⁶ *Id.* at 6479.

⁷ *Id.* at 6494.

in classifying braced firearms. The fact that the stabilizing brace can be used for both its original intended use and for firing from the shoulder had created a regulatory gap, sometimes called the “arm-brace loophole.”

The ATF enforces the NFA and GCA and one of its key functions is “to maximize public safety, particularly with respect to the reduction of violent firearm crime.”⁸ Thus the agency has an interest in tracking and classifying dangerous weapons, such as SBRs, that are present in America. The States share this interest, as some have SBR restrictions and regulations of their own.⁹ Accordingly, since stabilizing braces first appeared on the market, ATF has received classification requests from individuals seeking clarity as to the regulatory treatment of such devices. In 2012, the ATF first received a classification request from a stabilizing brace owner, asking whether a firearm equipped with the brace falls under the short-barreled rifle definition within the NFA and the GCA.¹⁰ After a decade of inconsistent classification requests and responses regarding this issue, the ATF issued a final rule in 2023.¹¹ That rule provided a set of factors to apply when classifying brace-equipped firearms.

ATF now seeks to rescind the 2023 Final Rule, citing court cases that held the promulgation of the rule was procedurally improper and noting the vagueness of the classification factors. But rather than try to cure defects from the 2023 Final Rule with a clearer regulation, ATF proposes to rescind it entirely. That would leave firearm dealers and purchasers with *only* the statutory text of the NFA and GCA to determine how to classify their firearms, and thus uncertainty as to whether they must register their firearms or undergo a background check to possess them. In other words, ATF’s Proposed Rule fails to engage with any of the circumstances that prompted ATF to issue that rule in this first instance and instead abandons the critical need for regulatory guidance here.

This proposed “do nothing” approach violates the Administrative Procedure Act (“APA”). Under the APA, an agency must engage in reasoned decision making when proposing a change from a prior regulation. This includes an examination of the relevant data, consideration of important aspects of the problem before the agency, and analysis of possible alternative courses of action. Here, ATF’s reasoning failed to meet these requirements.

First, the agency failed to adequately consider important aspects of the problem created by stabilizing braces, including the public safety effects of unregulated modified rifles on the market and the uncertainty for retailers and firearm owners created by reliance on the statutory text alone. The agency admits the threats to public safety from this rule but does nothing to address that problem, instead simply asserting it has “no data” regarding the extent of such problems. Not only is this incorrect, but claiming no data exists is not sufficient justification for ignoring public safety risks and the accompanying defects in the agency’s proposed approach.

⁸ U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Fiscal Year 2025 Performance Budget CJ/PB Submission at 1 (available at <https://www.atf.gov/media/19231/download>) (last visited July 31, 2026).

⁹ *See, for example*, Cal. Penal Code §§ 17170; 33215.

¹⁰ 91 Fed. Reg. at 24454.

¹¹ *See* Factoring Criteria for Firearms With Attached “Stabilizing Braces,” 88 Fed. Reg. 6,478 (Jan. 31, 2023) (“2023 Final Rule”).

Second, the agency seemingly never considered the possibility that it could *amend* the factors set forth in the 2023 Final Rule or issue some other new regulation for use by industry members to classify stabilizing braces. The only alternatives ATF examined were retaining the 2023 Final Rule unchanged, rescinding it wholesale, or issuing nonbinding guidance; a revised, binding regulation was never analyzed.¹² ATF’s insufficient analysis of a regulatory middle ground ignores the agency’s duties under the APA to consider possible alternative courses of action.

Third, the agency failed to consider the reliance interests created by the 2023 Final Rule.

These failings would result in real harm to public safety for the States and their residents. The 2023 Final Rule was implemented to address a critical need, following inconsistent agency responses, as well as mass shootings around the country. That the rule may need to be amended provides no basis to abandon it wholesale, particularly where ATF has admitted the resulting public safety adverse impacts here.

Because of ATF’s failure to consider these defects in the “do nothing” approach, the agency has not provided a reasoned explanation for this Proposed Rule, and its adoption would be unlawful.

II. The Regulatory Problem of Stabilizing Braces

A. Statutory Background

“Congress passed the NFA to regulate certain weapons that were viewed as especially adaptable to criminal misuse.”¹³ The NFA curtails the criminal misuse of firearms in several ways,¹⁴ including by regulating many particularly dangerous weapons that “could be used readily and efficiently by criminals.”¹⁵ One category of regulated firearms is short-barreled rifles, defined as “a rifle having a barrel or barrels of less than 16 inches in length” or “a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.”¹⁶ The NFA requires the registration of rifles in the National Firearms Registration and Transfer Record.¹⁷ The short-barreled rifle is also subject to making and transfer taxes and Attorney General approval before they are made, manufactured, imported, or transferred.¹⁸ Any person engaged in the business of importing, manufacturing, or dealing in NFA firearms must register with the Attorney General and pay a special occupational tax.¹⁹

¹² See, e.g., 91 Fed. Reg. at 24459–60 (evaluating as alternatives only maintaining the status quo, wholesale rescission, and published guidance).

¹³ *Id.* at 24454.

¹⁴ See, e.g., *Lomont v. O’Neill*, 285 F.3d 9, 11 (D.C. Cir. 2002).

¹⁵ H.R. Rep. No. 83-1337, at A395 (1954).

¹⁶ 26 U.S.C. § 5845(a)(3), (4).

¹⁷ *Id.* § 5841.

¹⁸ *Id.* §§ 5811, 5812, 5821, 5822. Section 70436 of the One Big Beautiful Bill Act amended 26 U.S.C. 5811(a) to require that the transfer tax for all firearms regulated under the NFA, other than machine guns and destructive devices, be reduced to \$0.

¹⁹ *Id.* §§ 5801, 5802.

In 1968, Congress enacted another firearms statute, the GCA, as amended.²⁰ This law imposed specific restrictions on the interstate transport of “short-barreled rifles” to require approval from the Attorney General before their sale.²¹

“Congress specifically found that ‘short-barreled rifles’ are primarily weapons of war and have no appropriate sporting use or use for personal protection.”²² Short-barreled rifles are “often considered dangerous because they are ‘more easily concealable than long-barreled rifles’ and unusual because they ‘have more destructive power than traditional handguns, making them particularly desirable to malefactors and crooks.’”²³ “The NFA regulates rifle barrel length because a short-barreled rifle’s concealability coupled with its ‘heightened capability to cause damage’ make the weapon more appealing to those who intend to wield the firearm for unlawful use.”²⁴

B. Pre-2023 Final Rule Practices for Classification of Stabilizing Braces

Before the 2023 Final Rule, ATF took an inconsistent and ad hoc approach in response to individuals’ classification requests. Classification requests from FFLs to ATF are not mandatory, but many FFLs submit such requests so they can engage in firearm commerce in compliance with the law.²⁵ In 2012, ATF received a classification request regarding a forearm “stabilizing brace,” asking if adding the device to an AR-15-type pistol would change the classification of the firearm to a short-barreled rifle.²⁶ According to the requester, the device was designed to assist people with disabilities or limited strength or mobility with firing heavy pistols safely and comfortably.²⁷ ATF concluded at that time that the device was not designed to fire a weapon from the shoulder and thus did not warrant a change in classification.²⁸

After this initial classification, ATF continued to receive classification requests for firearms with stabilizing braces. ATF recognized that some stabilizing braces were being widely marketed by manufacturers and used by individuals to fire weapons from the shoulder.²⁹ In 2014, ATF classified multiple weapons with brace devices as short-barreled rifles subject to the NFA.³⁰

ATF applied this inconsistent approach to stabilizing brace classification for many years after 2014. Some early classification letters suggested that whether a stabilizing brace modified a pistol into a short-barreled rifle depended on the individual’s actual, intended, or incidental use of

²⁰ 18 U.S.C. §§ 921–931.

²¹ *Id.* § 922(a)(4), (b)(4).

²² *See United States v. Gonzalez*, No. 2:10-cr-00967, 2011 WL 5288727, at *5 (D. Utah Nov. 2, 2011) (quoting S. Rep. No. 90-1501, at 28 (1968)).

²³ *United States v. Rush*, 130 F.4th 633, 640 (7th Cir. 2025) (quoting *Bianchi v. Brown*, 111 F.4th 438, 451 (4th Cir. 2024)).

²⁴ *Id.* at 643 (citing *United States v. Cox*, 906 F.3d 1170, 1185 (10th Cir. 2018); *United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 517 (1992) (plurality opinion)).

²⁵ 88 Fed. Reg. at 6,482

²⁶ *Id.*

²⁷ *Id.*

²⁸ 88 Fed. Reg. at 6,483.

²⁹ *See, e.g., id.* at 6,479, 6,503 & n.87, 6,505, 6,527, 6,546–47

³⁰ *Id.* at 6,484.

the stabilizing brace.³¹ Sometimes ATF asked whether the brace device itself had been classified as a shoulder stock.³² Other times, ATF asked whether the brace could be used for single-handed fire.³³ ATF also explained at times that classification depended on “physical design characteristics.”³⁴

This ad hoc approach had downstream effects within the firearms market. ATF observed in 2021 that it had “received criticism” for not publishing the criteria for classifying stabilizing braces.³⁵ The agency recognized the need to provide more clarity regarding guidance to “allow industry members to plan, develop, and distribute products in compliance with the law, thereby reducing their risk of incurring criminal or civil penalties, or the potential for costly corrective actions, including a possible recall by the manufacturer.”³⁶

C. Stabilizing Braces’ Significant Adaptability for the Same Criminal Misuse that Congress Passed the NFA to Prevent.

ATF also recognized in 2021 that the lack of clarity regarding stabilizing braces had created a public safety problem; ATF observed that “[b]ecause short-barreled rifles are among the firearms considered unusual and dangerous, subjecting them to regulation under the NFA, it is especially important that such weapons be properly classified.”³⁷ ATF observed that, tragically, mass shooters in Dayton and Colorado used firearms equipped with stabilizing braces to commit mass murder.³⁸ This criminal use of stabilizing brace continued in 2023, when a shooter armed with a pistol equipped with a stabilizing brace killed three children and three adults at a school in Nashville, Tennessee.³⁹

³¹ See, e.g., *id.* at 6,484, 6,487–88.

³² *id.* at 6,484 n.26.

³³ *id.* at 6,501.

³⁴ *id.* at 6,502 n.81.

³⁵ 86 Fed. Reg. 30828.

³⁶ *Id.* at 30827.

³⁷ *Id.* at 30828.

³⁸ *Id.* citing Cameron Knight, *Dayton shooter used a modified gun that may have exploited a legal loophole* USA Today (published Aug. 5, 2019, updated Aug. 6, 2019) <https://www.usatoday.com/story/news/nation/2019/08/05/dayton-shooter-used-gun-may-have-exploited-legal-loophole/1927566001/> (the firearm used in a shooting killing 9 people and wounding 14 had a “pistol brace” used to “skirt[]” regulation of short-barrel rifles); Melissa Macaya *et al.*, *10 killed in Colorado grocery store shooting*, CNN (updated Mar. 23, 2021), https://www.cnn.com/us/live-news/boulder-colorado-shooting-3-23-21/h_0c662370eefaff05eac3ef8d5f29e94 (reporting that the firearm used in a shooting that killed 10 was an AR-15 pistol with an “arm brace”).

³⁹ [Metro Nashville PD on X: "Hale fired a number of rounds inside the Covenant Church/School building. She was armed with these 3 guns and significant ammunition. https://t.co/3LYOU2r0sh"](https://t.co/3LYOU2r0sh) / X; Emily Shapiro and Ivan Pereira, *'Nightmare': 6 killed in 'calculated' mass shooting at Nashville school*, ABC News (March 27, 2023) available at <https://abcnews.com/US/multiple-patients-reported-amid-active-aggressor-nashville-school/story?id=98152651>. See also *Second Amend. Found., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 702 F. Supp. 3d 513, 537 (N.D. Tex. 2023) (“[B]race-equipped pistols that effectively operated as SBRs have been used by criminal gunmen to successfully execute mass shootings

D. The 2023 Final Rule Regarding Stabilizing Braces

In an attempt to clear up this regulatory uncertainty and to address the dangerous use of stabilizing braces, ATF announced a final rule on January 13, 2023, to clarify that the statutory phrase “designed, redesigned, made or remade, and intended to be fired from the shoulder” includes any weapon that is equipped with an accessory, component, or other rearward attachment (e.g., a “stabilizing brace”) that provides surface area allowing the weapon to be fired from the shoulder, provided that other factors indicate that the weapon is designed, made, and intended to be fired from the shoulder.⁴⁰ ATF provided a list of those other factors to consider.⁴¹ ATF’s classification of stabilizing braces, guided by these factors, would determine whether stabilizing brace purchasers would need to adhere to the regulatory requirements of the NFA when possessing such items.

ATF explained at the time that the reasons for the 2023 Final Rule were the need to “provide clarity to the firearm industry and public,”⁴² and to “enhance public safety by reducing the criminal use of NFA firearms, which are easily concealable from the public and first responders.”⁴³ In announcing the Rule, the ATF Director at the time explained, “This rule enhances public safety and prevents people from circumventing the laws Congress passed almost a century ago. In the days of Al Capone, Congress said back then that short-barreled rifles and sawed-off shotguns should be subjected to greater legal requirements than most other guns. But certain so-called stabilizing braces are designed to just attach to pistols, essentially converting them into short-barreled rifles to be fired from the shoulder. Therefore, they must be treated in the same way under the statute.”⁴⁴

The 2023 Final Rule was subject to litigation and eventually vacated. The bases for such injunctions included failure to provide the public with a meaningful opportunity to comment on the proposed rule,⁴⁵ and failure to engage in reasoned decision-making given the difficulties in applying the factors.⁴⁶ Notably, no court concluded ATF could not regulate in this space. Instead, for instance, the Fifth Circuit observed that ATF’s final rule was not a logical outgrowth of its proposed rule, thus the “Final Rule therefore must be set aside as unlawful or otherwise remanded for appropriate remediation.”⁴⁷ And the Fifth Circuit acknowledged the legitimate uncertainty that

of innocent people lends additional support to the conclusion that brace-equipped firearms deemed SBRs under the Final Rule are ‘dangerous and unusual.’”)

⁴⁰ 88 Fed. Reg. at 6,569.

⁴¹ *Id.* at 6,569–70.

⁴² *Id.* at 6494.

⁴³ *Id.* at 6572.

⁴⁴ Department of Justice, “Justice Department Announces New Rule to Address Stabilizing Braces, Accessories Used to Convert Pistols into Short-Barreled Rifles” (Jan. 13, 2023), <https://www.justice.gov/archives/opa/pr/justice-department-announces-new-rule-address-stabilizing-braces-accessories-used-convert> (last visited July 31, 2026).

⁴⁵ *Mock v. Garland*, 75 F.4th 563 (5th Cir. 2023); *Colon v. ATF*, No. 8:23-CV-223-MSS-UAM, 2024 WL 309975, at *10–21 (M.D. Fla. Jan. 26, 2024).

⁴⁶ *Firearms Regul. Accountability Coal. v. Garland*, 112 F.4th 507, 526 (8th Cir. 2024).

⁴⁷ *Mock v. Garland*, 75 F.4th 563, 586 (5th Cir. 2023).

gave rise to the 2023 Final Rule, observing that ATF’s pre-Rule “determinations proceeded on somewhat of an *ad hoc* basis, and the unifying logic was not always discernable.”⁴⁸

As a result of that vacatur, the States would expect ATF to return to the proverbial drawing board to thoughtfully craft a new regulation to serve the now unmet need that occasioned the 2023 Final Rule. ATF cites no case or legal principle foreclosing an agency from proposing a new rule to replace a vacated rule where the underlying problem persists. Indeed, ATF’s “do nothing” approach indicates that it has strayed from its previously stated position that it is not “reasonable to wait for an NFA firearm to be used in a significant criminal incident before crafting procedures reasonably calculated to carry out its regulatory mandate to prevent prohibited persons from obtaining NFA firearms,” because firearms equipped with stabilizing braces have already been used in multiple “significant criminal incident[s]”, (i.e., mass shootings).

III. The Proposed Rule Fails to Adequately Consider or Address the Problem of Stabilizing Braces

In the Proposed Rule, which simply rescinds the 2023 Final Rule, ATF has failed to conduct reasoned decision-making necessary to address the unique issues related to stabilizing braces under the NFA. ATF proposes removing the provisions added by the 2023 Final Rule that further define stabilizing braces, such that no ATF regulation will make any reference to the stabilizing brace. ATF says that the removal of the 2023 revisions is necessary “[d]ue to the confusion generated by the 2023 final rule” and the “benefits of a case-by-case classification based on the unique designs of each firearm.” With a plan to provide no guidance or regulation regarding stabilizing braces, the agency will instead “rely on the statutory language without further elaboration.”

This proposed “do nothing” approach is arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A), for three reasons. First, when an agency is regulating to address a problem, the agency’s action is arbitrary and capricious where the agency has ““entirely failed to consider” an “important aspect of the problem.”⁴⁹ Here, there are important aspects of the problem of stabilizing braces—namely the ambiguity they create, the attendant costs of that ambiguity, and the public safety hazard of an unregulated market—that ATF did not sufficiently analyze. Indeed, ATF downplays the risk and harm stabilizing braces.

Second, when an agency is modifying an existing policy, it must consider “alternatives that are within the ambit of the existing policy.”⁵⁰ An agency must meet all of these requirements for reasoned decision making, even when it is rescinding an existing policy. *Id.* Here, ATF failed to consider the possibility it could regulate stabilizing braces *differently* than the 2023 final rule, rather than offer no regulation at all.

⁴⁸ *Id.*

⁴⁹ *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43. (1983).

⁵⁰ *Dep’t of Homeland Security v. Regents of Univ. of Cal.*, 591 U.S. 1, 30 (2020) (cleaned up).

Third, an agency that changes course must take into account any “serious reliance interests” engendered by its prior policy.⁵¹ As discussed below, ATF failed to consider the substantial reliance interests engendered by the 2023 Final Rule.

A. ATF failed to adequately consider the uncertainty costs and public safety impact created by its proposed “do nothing” approach.

ATF’s proposed “do nothing” approach would “rely on the statutory language without further elaboration.” This leaves the firearm market in a regulatory environment in which agency staff, industry members, and consumers are at the mercy of *ad hoc* classifications to categorize braced firearms. Since that has not been sufficient to this point, there is no reason to believe it suddenly would be sufficient now. ATF first concluded in 2020 that there was a need to provide clarity to the firearm industry and the public on how ATF evaluates firearms equipped with a stabilizing brace.⁵² ATF confirmed such a need in promulgating the 2023 Final Rule.⁵³ No court disagreed with this conclusion, yet ATF never explains why it is now deviating from that conclusion. On the contrary, it has failed to adequately consider the consequences of choosing this path, particularly the impacts of ongoing uncertainty, including significant costs, and public safety harms for all involved.

ATF does not explain why this same old *ad hoc*, case-by-case approach now would provide any more clarity than it did before the 2023 Final Rule that it seeks to rescind. Such clarity cannot be found in the regulatory text that results from ATF’s proposed rescission of the 2023 Final Rule. As ATF explains, the definition of rifle that would result from the rescission tracks the language of the NFA and GCA would read, in § 478.11:

A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

And in § 479.11, it would read:

A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

⁵¹ *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)); see also *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–33 (2020).

⁵² See 88 Fed. Reg. at 6,494.

⁵³ *Id.*

ATF does not explain how to determine if a braced firearm is “redesigned” and “intended” to be fired from the shoulder, nor does it provide any indicia of how it or anyone else would or should reason through analyzing those questions.

This continued uncertainty would impose substantial costs. First, ATF would bear additional costs from the regulatory uncertainty of the “do nothing” approach. ATF says that it would review classifications on a “case-by-case” classifications based on the “unique designs” of each firearm. But the agency does not make any effort to determine how many such classifications requests it might receive nor the time it would take to process such requests. ATF could examine data regarding the current market conditions for stabilizing braces and expected future sales to estimate the number of different “unique designs” available on the market. From that estimate, it could have projected the staffing and processing costs of its chosen case-by-case approach. Instead, ATF failed entirely to examine such data and assess the anticipated cost associated with the Proposed Rule.

Next, ATF acknowledges its proposal “increases the uncertainty for purchasers and manufacturers as to whether a given firearm configuration would fall under the NFA or not.” But it simply concludes it has “no data” from which to quantify such disbenefits. The agency cannot simply ignore the fact that its proposed approach will create a marketplace governed by uncertainty, based on the lack of data before it regarding this problem. This uncertainty also imposes tremendous costs on States, many of which separately regulate SBRs. Massachusetts’s experience illustrates these costs. Massachusetts strictly regulates the weapons at issue: state law defines a “rifle” as a weapon with a barrel of at least 16 inches, and it separately restricts “assault-style firearms,” a category that includes enumerated AR-15-type weapons and certain semiautomatic pistols.⁵⁴ But States cannot secure those judgments through state law alone. Of the 3,487 crime guns recovered and traced in Massachusetts in 2023, ATF’s own data identified a source state for 2,316—and 1,511 of those, roughly two-thirds, were first sold outside the Commonwealth.⁵⁵ States therefore depend on the NFA’s federal registration and classification backstop to keep unregistered short-barreled rifles from flowing across their borders, and under the Proposed Rule state licensing officials, prosecutors, and courts would be left to resolve, at their own expense, the classification questions ATF declines to answer. ATF nonetheless certified—without analysis and without consulting the States—that the Proposed Rule “will not have substantial direct effects on the states.”⁵⁶

ATF’s Regulatory Flexibility Act certification suffers from the same defect: it reasons that the rescission merely “removes previously added requirements,” while ignoring ATF’s own prior finding that classification uncertainty exposes licensees—including small manufacturers and dealers—to the risk of criminal or civil penalties and costly corrective actions, including recalls.⁵⁷

⁵⁴ See Mass. Gen. Laws ch. 140, § 121, as amended by St. 2024, c. 135.

⁵⁵ ATF, *Firearms Trace Data: Massachusetts – 2023*, <https://www.atf.gov/resource-center/firearms-trace-data-massachusetts-2023> (last visited July 29, 2026).

⁵⁶ 91 Fed. Reg. at 24460.

⁵⁷ 91 Fed. Reg. at 24461 (certification); cf. 86 Fed. Reg. at 30827 (finding that published classification criteria would allow industry members to reduce “their risk of incurring criminal or civil penalties, or the potential for costly corrective actions, including a possible recall by the manufacturer”).

The agency, again, could have conducted a reasoned analysis of such costs by collecting data regarding the number of braces on the market, the number of braces that are marketed specifically for their use to convert firearms, or data from the state and local level where stabilizing braces are more clearly regulated by applicable state law. ATF cannot acknowledge a harm but simply forego any attempt to calculate the nature of that harm.

Furthermore, already in late 2020, ATF reached factual conclusions regarding the marketplace uncertainty and other harms associated with the lack of classification regulation regarding stabilizing braces, observing in promulgating the 2023 Final Rule that:

(1) previous ATF classification determinations had led to confusion and there was a need to provide clarity to the firearm industry and public on how ATF evaluates firearms equipped with a “stabilizing brace”; (2) manufacturers were adding to the confusion by labeling “stabilizing braces” that ATF had not evaluated as “ATF compliant”; and (3) [...] these “braces” were being used with firearms extensively to create short-barreled rifles without following NFA requirements.⁵⁸

These conclusions warrant adequate consideration of whether a replacement regulation should be proposed in place of the 2023 Final Rule.

When an agency changes course, “a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.”⁵⁹ None was provided here. Instead, ATF disregarded the facts and circumstances that led to the 2023 Final Rule including the lack of clarity in the marketplace and the public safety effects of proliferation of unregulated SBRs. ATF provided no reason for doing so. The question of whether the device can be labeled as “ATF compliant” is unaddressed by the agency’s proposed path forward, and ATF conducts no analysis of *how many* pistols may be converted into unregulated SBRs as a result of its proposed course of action.

Finally, ATF acknowledges, but fails to analyze, the public safety effects of an unregulated stabilizing brace market, whereby criminals could use the devices to modify firearms without regulation by ATF. The agency acknowledges that its approach “would pose an increased public safety problem,” but again simply states there is “no data” available regarding this problem. This is not true. ATF could review crime statistics, gun trace data, and publicly available data regarding prosecutions to determine the risks posed by short-barreled rifles, and the problems that would flow from making it easier to possess an unregulated rifle through the use of a stabilizing brace. ATF’s own data shows that since SBR manufacturing increased by more than 24,000% between 2000 and 2020.⁶⁰ The agency cannot simply discount the nature of this problem by claiming it

⁵⁸ 88 Fed. Reg. at 6,494.

⁵⁹ *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009).

⁶⁰ ATF, National Firearms Commerce and Trafficking Assessment: NFCTA Updates, New Analysis, and Policy Recommendations, Vol. IV, Introduction at 1, <https://www.atf.gov/firearms/docs/report/nfcta-volume-iv-introduction/download> (last visited July 31, 2026)).

lacks data, without making any efforts taken to obtain such data or analyze existing data. Furthermore, multiple courts have recognized the dangerousness of SBRs.⁶¹

B. ATF did not adequately consider proposing a new regulation.

ATF also entirely fails to consider the possibility that it could have amended the 2023 classification factors or propose new classification factors to address the problem of regulatory ambiguity and public safety created by stabilizing braces. This is an obvious alternative that the agency simply ignores. Instead, ATF criticizes the 2023 Final Rule for failing to provide the “clarity the agency hoped to provide” and moves straight to its choice to do nothing about stabilizing braces. ATF never devotes any analysis to the possibility of revised criteria to issue for categorizing stabilizing braces or alternative procedures for adjudicating the classification of such items, short of the case-by-case approach it has selected. Such analysis is required when an agency rescinds a policy.⁶²

ATF’s decision not to regulate stabilizing braces is particularly concerning in light of ATF’s other proposed rules deregulating items covered by the NFA. The segmentation of ATF’s NFA rules obscures the real regulatory choice before ATF, the public, the States, and any reviewing court. The question is not whether each individual proposed rule can be described as modest when viewed in isolation. The question is what happens to NFA weapon trafficking detection, state enforcement of laws that prohibit NFA weapons, and state and local investigations, when all of these changes take effect together. ATF has not answered that question. Instead, it has divided the administrative record in a way that makes the whole package harder to see and harder to evaluate.

C. ATF failed to consider the serious reliance interests engendered by the 2023 Final Rule.

Rescission of the 2023 Final Rule also implicates serious reliance interests that ATF never acknowledges. ATF has stated that, as of June 1, 2023, it had received 255,162 applications for tax-free registration of braced firearms under the 2023 Final Rule’s compliance process,⁶³ and as

⁶¹ See *Bianchi v. Brown*, 111 F.4th 438, 451 (4th Cir. 2024) (short-barreled rifles “are more easily concealable than long-barreled rifles but have more destructive power than traditional handguns,” giving them the “ability to inflict damage on a scale or in a manner disproportionate to the end of personal protection” and “making them particularly desirable to” criminals) (citation omitted); *United States v. Royce*, 2023 WL 2163677, at *3 (D.N.D. Feb. 22, 2023) (“Short-barrel rifles ... are dangerous and unusual weapons that are easily concealable”) (cleaned up)); *United States v. Conner*, 2025 WL 2858030, at *4–5 (W.D. Tex. Sept. 19, 2025) (“[S]hort-barreled rifles ... are subject to the historical tradition of prohibiting the carrying of dangerous and unusual weapons.” (cleaned up)); cf. *United States v. Eggebrecht*, 486 F.2d 136, 137 (8th Cir. 1973) (finding unpersuasive “the assertion that a sawed-off rifle ‘become[s] just another handgun’”).

⁶² *State Farm*, 463 U.S. at 51.

⁶³ *ATF Says a Quarter Million Guns Registered Under Pistol-Brace Rule*, The Reload (June 2023), <https://thereload.com/atf-says-a-quarter-million-guns-registered-under-pistol-brace-rule/> (quoting ATF Public Affairs Division statement that, “[a]s of June 1, 2023, ATF received 255,162 applications for tax-free registration”) (last visited July 31, 2026).

of late 2025 the agency was still processing pending applications submitted under that process.⁶⁴ Yet the Proposed Rule contains no discussion of reliance interests at all, and it never addresses what will become of the hundreds of thousands of National Firearms Registration and Transfer Record entries that the 2023 Final Rule induced—registrations that state and local law enforcement rely upon to identify and trace these weapons. If those records are purged or allowed to lapse, their investigative value cannot be recreated, and no later rulemaking or judicial decision could undo the loss. At a minimum, ATF must analyze these reliance interests, and any final rule must provide for the preservation of the registration records created in reliance on the 2023 Final Rule.

Nor may ATF assess this rescission in isolation. ATF has announced a self-described “landmark package of proposed and final rules” relaxing federal firearms regulation,⁶⁵ and the public-safety consequences of an unregulated stabilizing-brace market will be felt in combination with those contemporaneous deregulatory actions, not apart from them. That cumulative effect is an “important aspect of the problem” that ATF was required to consider,⁶⁶ and the Proposed Rule nowhere does so.

IV. Conclusion

In light of the foregoing, the undersigned Attorneys General on behalf of the States urge ATF to withdraw the Notice.

Sincerely,



Kwame Raoul
Illinois Attorney General



Kristin K. Mayes
Arizona Attorney General



Rob Bonta
California Attorney General



Philip J. Weiser
Colorado Attorney General

⁶⁴ ATF, *Information Regarding Pending NFA Forbearance Applicants Submitted Pursuant to the Vacated Final Rule 2021R-08F Pertaining to Stabilizing Braces*, <https://www.atf.gov/rules-and-regulations/information-regarding-pending-nfa-forbearance-applicants-submitted-pursuant> (last visited July 29, 2026) (stating that ATF would begin processing still-pending registration applications on November 11, 2025).

⁶⁵ ATF, *ATF’s New Era of Reform*, <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform> (last visited July 29, 2026) (describing a “landmark package of proposed and final rules”).

⁶⁶ *State Farm*, 463 U.S. at 43.



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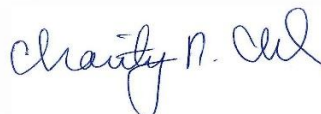
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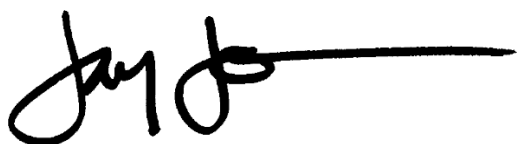
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August 4, 2026

Via Federal Rulemaking Portal (Regulations.gov)

The Honorable Todd Blanche
Acting Attorney General of the United States

Robert Cekada
Director of the Bureau of Alcohol, Tobacco,
Firearms and Explosives

c/o: ATF Rulemaking Comments
Mail Stop 6N-518, Office of Regulatory Affairs
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Bureau of Alcohol, Tobacco, Firearms, and Explosives
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ATTN: ATF 1140-AA64

Re: RIN 1140-AA64, *Selecting Biological Sex on ATF Forms*

Dear Acting Attorney General Blanche and Director Cekada:

We, the Attorneys General for the States of Illinois, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawai'i, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington ("the States"), write in opposition to the Bureau of Alcohol, Tobacco, Firearms, and Explosives' ("ATF") notice of proposed rulemaking ("Proposed Rule") entitled *Selecting Biological Sex on ATF Forms*, first noticed in the Federal Register on May 6, 2026.¹

The Proposed Rule accompanies a slate of nearly three dozen ATF rule changes or

¹ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462 (May 6, 2026).

proposed rule changes that reflect an agency which has “fundamentally changed course.”² Acting Attorney General Todd Blanche calls this the “most comprehensive regulatory reform package in the history of ATF.”³ According to ATF, this Proposed Rule—which adds and otherwise adjusts language in three separate federal regulations that, taken together, apply to a substantial number of ATF forms—is designed to “resolve any potential confusion on how to fill out ATF forms.”⁴ But the Proposed Rule would do the opposite. Specifically, if accepted, the Proposed Rule would not only *increase* confusion, but it would compromise individuals’ ability to lawfully purchase firearms, undermine the very purpose of ATF forms and recordkeeping, negatively impact public safety, and impede law enforcement’s ability to solve crime.

The States have substantial interests that are implicated by this Proposed Rule, including an interest in ensuring accurate recordkeeping in firearms transactions and providing law enforcement with the necessary tools and information needed to solve crime. Moreover, the States also have an interest in ensuring that intersex, transgender and non-binary individuals are protected from unlawful discrimination and are afforded the same constitutional rights as their peers.

The States submit this comment because the Proposed Rule is harmful, conflicts with state law and policies and ATF’s prior policy, impedes an individual’s right to lawfully obtain firearms, and undermines the congressional intent of required ATF forms. Additionally, the Proposed Rule is unlawful under the Administrative Procedure Act (“APA”) where it is both contrary to law and arbitrary and capricious. For the reasons described more fully below, ATF should withdraw the Proposed Rule in its entirety.

I. The Proposed Rule

The Proposed Rule seeks to amend the language of three regulations with the primary goal to “make clear that ‘sex’ on ATF forms refers to an individual’s immutable biological classification as either male or female and does not include the concept of gender identity and that individuals should select their biological sex.”⁵ The Proposed Rule would apply to each and every ATF form promulgated pursuant to the Gun Control Act (“GCA”), the National Firearms Act (“NFA”), and federal explosive laws,⁶ though not every form promulgated under the same seeks information concerning an individual’s “sex.”⁷ Additionally, the Proposed Rule seeks to amend

² *ATF’s New Era of Reform*, ATF, <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform> (last updated May 12, 2026).

³ ATF, *Acting AG Blanche and Acting ATF Director Cekada Announce Changes to ATF Regulations*, <https://www.justice.gov/opa/video/acting-ag-blanche-and-acting-atf-director-cekada-announce-changes-atf-regulations> (Apr. 29, 2026).

⁴ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24463.

⁵ *Id.* Specifically, the Proposed Rule suggests amendments to 27 C.F.R. § 478.21(a), 27 C.F.R. § 479.21(a), and 27 C.F.R. § 555.21(a). See *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462-24466.

⁶ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24463 (proposing to amend 27 C.F.R. § 478.21(a), 27 C.F.R. § 479.21(a), and 27 C.F.R. § 555.21(a)).

⁷ See, e.g., ATF, FORM 5320.23, NATIONAL FIREARMS ACT (NFA) RESPONSIBLE PERSON QUESTIONNAIRE, (Revised Jan. 2023), https://www.atf.gov/sites/default/files2/f_5320.23_national_firearms_act_nfa_responsible_person_questionnaire.pdf [hereinafter ATF Form 5320.23]; ATF, FORM 5320.1 (FORM 1), APPLICATION TO MAKE AND

the same three regulations to either add or edit language concerning submitting the respective forms (that is, *all* of the forms) “under penalties of perjury, if the form or the regulation so provide.”⁸

Under ATF’s Proposed Rule, the regulations authorizing the prescription of forms under the GCA, such as Form 4473,⁹ as well as the prescription of forms under the NFA and for dealings and transactions regarding commerce in explosives, would add the following language included in bold:

The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. **The term ‘sex’ on ATF forms required by this part refers to an individual’s immutable biological classification as either male or female and does not include the concept of gender identity. Individuals completing forms required by this part should select their biological sex. Each form must be executed under penalties of perjury, if the form or the regulation so provide.**

27 C.F.R. § 478.21(a),¹⁰ 27 C.F.R. § 479.21(a),¹¹ and 27 C.F.R. § 555.21(a) (emphasis added as to all).¹² Additionally, the Proposed Rule suggests a “technical edit” to correct the authority citation line for 27 CFR part 478 to read as: “5 U.S.C. 552(a); 18 U.S.C. 847, 921-934; 44 U.S.C. 3504(h).”¹³

II. Background

“ATF’s regulations...authorize the Director to prescribe forms required to implement the GCA, NFA, and federal explosives laws.”¹⁴ These forms¹⁵ are critical for ensuring compliance

REGISTER NFA FIREARM, (Revised Dec. 2025), <https://www.atf.gov/media/22361/download> [hereinafter ATF Form 1].

⁸ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24465-24466.

⁹ See ATF, FORM 4473, FIREARMS TRANSACTION RECORD, (Revised Aug. 2023) <https://www.atf.gov/media/18646/download> [hereinafter ATF Form 4473].

¹⁰ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24465 (proposed language included in bold).

¹¹ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24466 (proposed language included in bold). The Proposed Rule also strikes language—“[e]ach form requiring that it be executed under penalties of perjury shall be executed under penalties of perjury”—from 27 C.F.R. § 479.21(a). *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24466 (“remove from paragraph (a) the fourth sentence”).

¹² *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24466 (proposed language included in bold).

¹³ *Id.* at 24463-64.

¹⁴ *Id.* at 24463.

¹⁵ Though the Proposed Rule impacts *each* form authorized under the aforementioned regulations, in explaining the Proposed Rule’s impact, ATF uses Form 4473 as its guiding example. See *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24463 (using Form 4473 as its example in claiming that “ATF understands the term ‘sex’ as used in

with state, federal, and local law, and are designed to ensure lawful transactions and promote public safety.¹⁶

A. ATF Form 4473, Recordkeeping, and Public Safety

“Congress’s ‘principal purpose’ in enacting the [GCA]—[was] ‘to curb crime by keeping ‘firearms out of the hands of those not legally entitled to possess them.’”¹⁷ To that end, the Act creates recordkeeping obligations for federal firearm licensees (“FFLs”), including a requirement that each “licensed dealer shall maintain [] records of . . . [the] sale” of firearms.¹⁸ A “licensed importer, licensed manufacturer, or licensed dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, unless the licensee records the transaction on a firearm transaction record, Form 4473.”¹⁹ Form 4473 is used extensively, and is completed for “every transfer of a firearm” conducted by licensees for sales to non-licensees.²⁰

Form 4473 serves two primary purposes, both of which are essential to public safety, and both of which are negatively impacted by the Proposed Rule. First, Form 4473 ensures firearms transactions comply with federal and state law at the time of sale, most essentially preventing the transfer of firearms to those prohibited by law. Second, Form 4473 provides a reliable and accurate source of information for law enforcement investigating crimes and tracing firearms, including in circumstances where the firearm was recovered after having been used in a crime.

1. Accurately Documenting Lawful Transfers

Form 4473 is meant to assist FFLs in ensuring that they only transfer firearms to individuals lawfully permitted to receive them.²¹ Industry organizations often herald FFLs as the “first line of

its regulations [and on Form 4473] to mean the binary, biological distinctions between male and female.”). Accordingly, throughout this Comment, the States will similarly focus on Form 4473 to illustrate the issues with the Proposed Rule. Though the States focus on Form 4473, the issues raised herein are similarly applicable to other impacted ATF forms promulgated under the relevant regulations and statutes.

¹⁶ See, e.g., *Federal Firearms Licensee Quick Reference and Best Practices Guide*, ATF, <https://www.atf.gov/firearms/tools-and-services-firearms-industry/current-licensees/federal-firearms-licensee-quick-reference-and-best-practices-guide>, (last updated May 8, 2026) [hereinafter “Best Practices Guide”]; see also, *id.* (navigate to “ATF Form 4473”).

¹⁷ *Abramski v. United States*, 573 U.S. 169, 181 (2014) (internal citations omitted).

¹⁸ 18 U.S.C. § 923(g)(1)(A) (“Each . . . licensed dealer shall maintain such records of . . . sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe.”).

¹⁹ 27 C.F.R. § 478.124(a). Further, FFLs must retain these firearms transaction records “until business or licensed activity is discontinued” in the manner ascribed in the relevant federal regulations. 27 C.F.R. § 478.129(b). Retention is required even where “a sale, delivery, or transfer” did not ultimately take place. *Id.*

²⁰ See 27 C.F.R. § 478.124; see also Best Practices Guide (navigate to “ATF Form 4473”).

²¹ ATF Form 4473, “Purpose,” at p. 3 (“The information and certification on this form are designed so that a person licensed under 18 U.S.C. § 923 may determine if he/she may lawfully sell or deliver a firearm to the person identified

defense” against illegal firearm sales, and Form 4473 is a key part of that defense.²² Prior to transferring firearms, the Act requires that FFLs (1) determine if the individual may lawfully receive the firearm based upon the information provided and verified for Form 4473, and (2) initiate a background check.²³ Indeed, Form 4473 is specifically “designed so that a [FFL] may determine if he/she may lawfully sell or deliver a firearm to the person **identified** . . . and to alert the transferee/buyer of certain restrictions on the receipt and possession of firearms.”²⁴ To accomplish this, the FFL, among other things, “verif[ies] the identity of the transferee,” and confirms the information the transferee has “executed [on] the Form 4473,” “by examining the identification document . . . presented.”²⁵ As described below, ensuring the accurate documentation of the transferee’s identity is critical to the key goal of lawful transfers, and it’s statutorily required.²⁶ This critical piece—ensuring accurate identification of the transferee at the time of transaction—is fundamentally thwarted by the Proposed Rule’s definition of and instruction concerning “sex.” See Sections II(B), III.

2. Supporting Law Enforcement Post-Transfer

After the firearm has been transferred, Form 4473 remains important. The information collected within Form 4473 “is critical to law enforcement,” including “facilitating crime gun

in Section B, and to alert the transferee/buyer of certain restrictions on the receipt and possession of firearms.”). Similarly, under the NFA, forms such as ATF Form 4 (5320.4) and ATF Form 1 (5320.1), are likewise designed to “determine the lawful eligibility of the transferee to possess an NFA firearm and to ensure that the firearm is properly registered” or to “determine whether the applicant is legally permitted to make and possess a firearm under federal, state, and local laws.” ATF, FORM 5320.4 (FORM 4), APPLICATION TO TRANSFER AND REGISTER NFA FIREARM (TAX-PAID), (Revised Dec. 2025), <https://www.atf.gov/media/23251/download>, “Purpose,” at 4 [hereinafter ATF Form 4]; see also ATF Form 1, “Purpose” at 4. And under federal explosives laws, forms such as ATF Form 5400.4 are “used to ensure compliance with federal explosives laws by verifying that explosive materials are distributed only to authorized limited permittees and that such transactions are conducted lawfully.” See, e.g., ATF, FORM 5400.4, LIMITED PERMITTEE TRANSACTION REPORT, (Rev. October 2025) <https://www.atf.gov/media/29601/download>, “Purpose,” at 2 [hereinafter ATF Form 5400.4]; see also ATF, FORM 5400.13A/5400.16, PART B – EXPLOSIVES RESPONSIBLE PERSON QUESTIONNAIRE, (Revised June 2025) [hereinafter ATF Form 5400.13A], <https://www.atf.gov/media/16626/download>, “Purpose,” at p. 4 (explaining the purpose of the form is to “determine the eligibility of the RP to be added to a license or permit and possess explosive materials.”).

²² See e.g., *NSSF, ATF Celebrate 25 Years of Partnership With The ‘Don’t Lie for the Other Guy’ Anti-Straw Purchasing Campaign*, NAT’L SHOOTING SPORTS FOUND. (Sept. 15, 2025), <https://www.nssf.org/articles/nssf-atf-25-year-dont-lie-for-the-other-guy-partnership/>; see also *Abramski*, 573 U.S. at 188 (stating that “the firearms law contemplates that the dealer will check not the fictitious purchaser’s but instead the true purchaser’s identity and eligibility for gun ownership”).

²³ See, e.g., 27 C.F.R. § 478.124(c)(5) (“The licensee shall sign and date the form if the licensee does not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm and transfer the firearm described on the Form 4473.”); see also 27 C.F.R. § 478.102(a).

²⁴ ATF Form 4473, “Purpose of the Form,” at p. 3 (emphasis added).

²⁵ 27 C.F.R. § 478.124(c)(3)(i).

²⁶ See 18 U.S.C. § 923(g)(1)(A)-(B); see also 27 C.F.R. § 478.124.

traces.”²⁷ The FFL must, among other things, provide details regarding the firearms, and verify the identities of the individuals who seek them.²⁸ As explained by ATF, this information can help “link a suspect to a firearm in a criminal investigation” via crime gun tracing.²⁹

Because FFLs must retain Forms 4473,³⁰ federal and state law enforcement use the forms to trace crime guns, solve crimes, and ensure public safety.³¹ According to the ATF’s Federal Firearms Licensee Quick Reference and Best Practices Guide, “[c]orrectly completing ATF Forms 4473 is one of the most important things [FFLs] can do to ensure that [law enforcement] can trace crime guns.”³² As ATF explains, “[f]irearm tracing provides critical information to assist domestic and international law enforcement agencies investigate and solve firearms crimes; detect firearms trafficking; and track the intrastate, interstate and international movement of crime guns.”³³ Accordingly, having Forms 4473 accurately record information, particularly concerning the transferee’s identity, is critical.³⁴ The “failure of an FFL to obtain a complete and correct ATF Form

²⁷ See, e.g., 60-Day Notice of Information Collection Request: Form 4473, 91 Fed. Reg. 25448; see also 27 C.F.R. § 478.124.

²⁸ 27 C.F.R. § 478.124(c).

²⁹ *National Tracing Center*, “The Tracing Process,” ATF, <https://www.atf.gov/firearms/tools-services-law-enforcement/national-tracing-center> (last updated September 19, 2024).

³⁰ 27 C.F.R. § 478.124(b); see also 27 C.F.R. § 478.129(b). However, as part of its “comprehensive regulatory reform package,” ATF now seeks to end the indefinite retention period currently required for Forms 4473. See *Firearm Records Retention Periods*, 91 Fed. Reg. 24413 (May 6, 2026) (to be codified at 27 C.F.R. pt. 478) (shortening retention periods for Form 4473 and related records).

³¹ 18 U.S.C. § 923(g)(1)(B) (“The Attorney General may inspect or examine the inventory and records” of an FFL, *inter alia*, “in the course of a reasonable inquiry during the course of a criminal investigation” and “for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.”); see also *What happens to the data provided on Form 4473?*, ATF, <https://www.atf.gov/firearms/questions-and-answers> (last visited July 25, 2026) (apply category “ATF Form 4473” and navigate to question “What happens to the data provided on Form 4473?”) (“ATF may inspect individual Forms 4473 containing personally identifying information held by FFLs only for limited regulatory or law enforcement functions . . . for example, when tracing firearms linked to individual criminal investigations”).

³² See Best Practices Guide (navigate to “ATF Form 4473”).

³³ *National Tracing Center*, ATF, <https://www.atf.gov/firearms/tools-services-law-enforcement/national-tracing-center> (last updated September 19, 2024).

³⁴ The same is true for forms concerning explosives, as records concerning explosives “support public safety efforts, allow tracing of explosives when necessary for law enforcement investigations, and help prevent unlawful distribution or misuse of explosive materials.” See ATF Form 5400.4, “Purpose,” at 2; ATF Form 5400.13A, “Purpose,” at p. 4 (explaining the purpose of the form is to “determine the eligibility of the RP to be added to a license or permit and possess explosive materials.”). The same is true for recordkeeping for NFA firearms. See ATF Form 5320.23, “Purpose” at p. 4 (“The information requested on this form will be used to determine the eligibility of an individual to serve as a responsible person to make or transfer NFA firearms”); see also ATF Form 1, “Purpose,” at p. 4 (“ATF uses the information collected . . . to determine whether the applicant is legally permitted to make and possess a firearm under federal, state, and local laws.”).

4473” and the “failure to obtain appropriate identification documents prior to a transfer of a firearm,” are among the “top violations impacting public safety.”³⁵

The Proposed Rule undermines the purpose of these forms.

B. ATF’s Current Regulatory Approach to “Sex” Enables Accurate Verification of Identity.

Ensuring that ATF forms accurately record and verify the identification of the individuals seeking access to firearms is a key component of their role in protecting public safety.³⁶

Accurate documentation of sex is not a new requirement for ATF. It added “‘sex’ as a requirement in the regulations in 1998 as part of implementing the Brady Handgun Violence Prevention Act.”³⁷ And in 2019, during the first Trump Administration, ATF proposed amending Form 4473 to include a “non-binary” option under Question 14, which was ultimately accepted.³⁸ Currently, Question 14, titled “Sex,” which “must be completed personally by [the] transferee/buyer,” provides three checkboxes: 1) Male, 2) Female, and 3) Non-Binary.³⁹ ATF specifically instructs “[i]ndividuals with neither male nor female on their identification document(s)” to “check Non-Binary.”⁴⁰ This of course allows the sex selection to match the individual’s official identification, as State identification may be used for identity verification under the Act and many states, including Illinois, Massachusetts, New Jersey, New York, and

³⁵ See Best Practices Guide (navigate to “Top Violations Impacting Public Safety”).

³⁶ This is true for all of the forms implicated by the Proposed Rule, however, as described in Section II, the States use Form 4473 as their example. See Section II(A); see also FN 15, *supra*.

³⁷ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24463. Specifically, in October 1998, the Department of Justice issued its Final Rule, *National Instant Criminal Background Check System*, which required, *inter alia*, information concerning an individual’s “sex” for purpose of a background check. See 63 Fed. Reg. 58303, 58310 (October 30, 1998). Additionally, ATF issued a Final Rule that required, *inter alia*, the inclusion of sex on Form 4473. *Implementation of Public Law 103-159, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act*, 63 Fed. Reg. 58272, 58275, 58279 (October 29, 1998).

³⁸ See *Firearms Transaction Record/Registro de Transaccion de Armas De Fuego (ATF Form 4473 (5300.9) (OMB Number 1140-0020)*, ATF, <https://www.atf.gov/rules-and-regulations/form-and-information-collection-notices/firearms-transaction-record/registro-de-transaccion-de-armas-de-fuego-atf-form-4473-5300-9-omb-number-1140-0020-0> (last visited July 25, 2026) (navigate to “Form,” marked “DRAFT,” see Question 14); see also *Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Firearms Transaction Record/Registro de Transaccio’n de Armas de Fuego— ATF Form 4473 (5300.9)*, 84 Fed. Reg. 71002 (Dec. 26, 2019). Through an Information Collection Request in May 2026, ATF now attempts to remove from Form 4473 the “non-binary” check box under Question 14. See 60-Day Notice of Information Collection Request: Form 4473, 91 Fed. Reg. 25448 (May 8, 2026); see also, ATF, FORM 4473, FIREARMS TRANSACTION RECORD, (Revised Dec. 2025) (form marked “DRAFT DO NOT USE”), <https://www.atf.gov/media/29576/download>. ATF does not discuss either the current inclusion of, or attempted removal of, the non-binary option within this Proposed Rule. Nor does ATF discuss this change, which it seemingly assumes to be true within the Proposed Rule, within the Form 4473 NPRM. See *Revising Firearms Transaction Record, “Form 4473,”* 91 Fed. Reg. 25432 (May 8, 2026).

³⁹ ATF Form 4473, Section B, Question 14, at p. 1.

⁴⁰ ATF Form 4473, “Question 14. Sex,” at p. 4.

Hawaii, issue official photo identification with gender markers and sex identification options beyond male and female.⁴¹

Relying on this identification, and prior to completing a transaction, the transferee must complete Section B of Form 4473, which requires, among other things, “the transferee’s name, sex, residence address (including county or similar political subdivision and whether they reside within city limits), and date and place of birth; the height, weight, and race of the transferee[.]”⁴² It also requires that individuals “must personally complete Section B” and “certify (sign and date) that the answers are true, correct, and complete.”⁴³

Thereafter, FFLs are specifically *obligated* to verify the information required in Section B—including Question 14, “Sex”. They do so by “examining the identification document (as defined in § 478.11) presented,” and contacting NICS to conduct the required background check.⁴⁴

In 2020, ATF acknowledged that the individual’s “sex,” as included on Form 4473, should reflect the information included on an individual’s identification documents presented to verify their identity when purchasing a firearm. As explained then, ATF included this non-binary option because of its desire to reduce confusion and ensure accurate information was recorded:

Federal regulations pertaining to the National Instant Criminal Background Check System (NICS) at 28 CFR 25.7 require the sex of the transferee in order to conduct a firearms background check. ATF determined that it was difficult for some transferees/buyers to complete item 14 because their identification document (e.g. driver’s license) are being issued as non-binary. By allowing these individuals to select the non-binary category it will better enable FBI and/or State Point-of-Contact make or rule out potential matches during the background process and can assist with criminal investigations.⁴⁵

⁴¹ 27 C.F.R. § 478.11 (defining “Identification document” to include State-issued identification); ATF Form 4473, at p. 6, Question 26.a, “Identification” (“transferee/buyer must provide a valid government-issued photo identification document” such as “[a] driver’s license or an identification card issued by a State.”); *see also* 15 ILCS 335/5(a-5); 625 ILCS 5/6-106(b-3); Mass. Gen. Laws ch. 90, § 8N; Press Release, N.J. Motor Vehicle Comm’n, Gender “X” Option Now Available for Licenses/IDs in New Jersey (April 19, 2021), <https://www.nj.gov/mvc/press/archives/2021/041921.htm>; N.Y. VTL Sections 490; 502.

⁴² 27 C.F.R. § 478.124(c)(1); *see also* ATF Form 4473.

⁴³ ATF Form 4473, “Section B,” at p. 4.

⁴⁴ 27 C.F.R. § 478.102(a); 27 C.F.R. §§ 478.124(c)(1)-(3)(i)-(iv); *see also* *Firearms Questions and Answers*, ATF, <https://www.atf.gov/firearms/questions-and-answers> (apply category “ATF Form 4473” and navigate to question, “Why is this demographic information needed?”) (last visited July 26, 2026) (“during background checks, this information is needed to facilitate proper identification by providing additional information that helps match – or rule out a match – between an individual and a potentially prohibiting record”).

⁴⁵ *See* ICR Documents, Office of Information and Regulatory Affairs, Office of Management and Budget, “Combined Comments and Responses 4.21.2020,” Response Dan’s Guns’ December 30, 2019 Comment on January 2, 2020, at 3, https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202004-1140-006 (last accessed July 26, 2026); Accordingly, ATF has, at least since 2019, acknowledged that the question of “Sex” is not properly presented as a simple, binary choice between “male,” and “female,” as they now claim in the Proposed Rule.

ATF's 2020 explanation is not only consistent with the underlying purpose of these forms, but also with the instructions provided to and statutorily mandated obligations of FFLs, who must ensure the forms are properly filled out with accurate information.

III. The Proposed Rule Conflicts with State Law, Would Cause Confusion that Can Harm Lawful Participants' Rights, and Would Harm Public Safety.

A. The Proposed Rule Conflicts with State Law, Federal Regulations, and ATF's Instructions to FFLs.

As ATF acknowledges, a common form of identification used by transferees, and verified and inspected by FFLs, in transferring firearms is a "driver's license or an identification card issued by a State."⁴⁶ As ATF is aware, many states, including Illinois, allow individuals to change the gender marker on their state-issued identification documents, including drivers licenses, to accurately reflect their gender identity.⁴⁷ Indeed, ATF acknowledges this, and includes specific instruction on Form 4473 concerning individuals whose state-issued identification includes a non-binary gender marker.⁴⁸

Despite specifically authorizing and, in fact, *instructing* individuals (and FFLs) on Form 4473 to use and rely on state-issued identification documents,⁴⁹ including those that reflect a gender identity different than their sex assigned at birth,⁵⁰ the Proposed Rule now would ignore that identification. It would require individuals to check either Male or Female, regardless of what is documented on their state-issued identification, based on what ATF now describes as an "individual's immutable biological classification as either male or female."⁵¹ This is all the more capricious as Proposed Rule relies on a factually inaccurate conceptualization of "sex." Indeed, neither gender nor sex exist solely on a male/female binary but instead can encompass a range of

⁴⁶ ATF Form 4473, "Question 26.a Identification," at p. 6.

⁴⁷ See, e.g., 15 ILCS 335/5(a-5) (the Secretary of State "shall permit" applicants to designate "male", "female", or "non-binary" for sex on the identification card application form) and 625 ILCS 5/6-106(b-3) (the Secretary of State "shall permit" applicants to designate "male", "female", or "non-binary" for sex on the driver's license application form); see also, e.g., MASS. GEN. LAWS ch. 90, § 8N (RMV "shall permit" applicants to designate "X," "M," or "F" for gender on driver's licenses, learner's permits and identification cards); see also CAL. VEH. CODE §12800(a)(2)–(3); Cal. Health & Safety Code § 103426; Cal. Code Reg., tit. 11, § 4045.1; HAW. REV. STAT. §§ 286-109(a), 286-303(c).

⁴⁸ See ATF Form 4473, "Question 14. Sex," at p. 4 ("Individuals with neither male nor female on their identification document(s) should check Non-Binary.").

⁴⁹ See, e.g., ATF Form 4473, "Question 26.a, Identification" at 6 ("The transferee/buyer must provide a valid government-issued photo identification document to the transferor/seller that contains the transferee's/buyer's name, residence address, and date of birth. A driver's license or an identification card issued by a State is acceptable."); see also 27 C.F.R. § 478.11.

⁵⁰ See ATF Form 4473, "Question 14. Sex," at p. 4.

⁵¹ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24463.

identities and biological variations.⁵² ATF fails to recognize this studied truth and would forcibly out and create administrative barriers for individuals who are intersex, transgender, or non-binary.

Most difficult for FFLs and state enforcers, the Proposed Rule demands information that no authorized identification document supplies. Because the identification documents FFLs are required to examine and record the sex designation issued by the State—not an allegedly “immutable biological classification”—the Proposed Rule would require transferees to attest to information that FFLs have no lawful means to verify, rendering the mandatory identity-verification process a nullity as to Question 14.⁵³ This of course conflicts with what federal regulations allow FFLs to rely on—specifically, state drivers licenses—and undermines the instructions provided to them on the form itself. For NICS Point of Contact states, this would also create an inconsistency between state records that use the gender from state-issued identification documents and the Form 4473 retained by FFLs.

Accordingly, the Proposed Rule not only fundamentally undermines the purpose of accurate recordkeeping and Form 4473, *see* Section II(A), *supra*, but conflicts with relevant state law, federal regulations, and ATF’s own instructions.

B. The Proposed Rule Would Cause Confusion That Can Harm Lawful Transferees’ Rights and Expose Participants to Unnecessary Liability.

Because the Proposed Rule defines sex in a manner that conflicts with federally authorized, state-issued documentation relied upon by FFLs in ensuring the transactions are lawful, the Proposed Rule will cause confusion. That confusion ultimately compromises the right of intersex, transgender, and non-binary individuals to lawfully purchase firearms. ATF has previously, and explicitly, acknowledged this confusion before, which is why ATF included a Non-Binary option for Question 14.⁵⁴ *See* Section II(B), *supra*.

First, the Proposed Rule will cause confusion because ATF is providing instructions on how to fill out Form 4473 in the *regulations*, rather than including this newly asserted definition and instruction on the form itself. Accordingly, this requires prospective transferees to familiarize themselves with the regulation at issue in order to understand how to answer Question 14, “Sex,” specifically. This welcomes confusion by essentially requiring, via federal regulation and without notice on the document, those completing Forms 4473 to include identifying information that

⁵² *See* U.S. Dep’t of Health & Human Servs., *Advancing Health Equity for Intersex Individuals* (Jan. 2025), <https://interactadvocates.org/wp-content/uploads/2025/01/intersex-health-equity-report.pdf> (discussing “sex characteristics,” i.e., physical traits related to reproduction and naturally occurring variations of sex characteristics).

⁵³ *See* 27 C.F.R. § 478.11 (defining “identification document”); 27 C.F.R. § 478.124(c)(3)(i) (requiring FFLs to verify the identity of the transferee by examining the identification document presented).

⁵⁴ *See* ICR Documents, Office of Information and Regulatory Affairs, Office of Management and Budget, “Combined Comments and Responses 4.21.2020,” at p. 11, Response to Freddie Merc’s Gun Werces, at p. 11 (“ATF determined that it was difficult for some transferees/buyers to complete item 14 because their identification document (e.g. driver’s license) are being issued as non-binary.”).

conflicts with the proof of identity they otherwise are relying on to verify the purchaser's identity.

Second, the Proposed Rule will necessarily, and significantly, compromise the rights of intersex, transgender and non-binary individuals. Where the information presented by an individual on Form 4473 conflicts with the information included on the identification documents the FFL is required to “examin[e]” and “verify,” it is likely that the FFL would deny the transaction because of a discrepancy between the information included on the Form 4473 and the individual's license, a discrepancy based solely on the individual's intersex, non-binary, or transgender status.⁵⁵ Essentially, these individuals would thus be faced with a choice to: 1) check the box associated with their sex assigned at birth in compliance with the Proposed Rule, but which would result in a denial of transaction due to inconsistent information included on the Form 4473 as compared to their state identification document; 2) check the box for Question 14 that is consistent with their state identification documents and risk criminal or civil prosecution for providing “incorrect” information on Form 4473, as defined by the Proposed Rule;⁵⁶ or 3) not purchase a firearm entirely because of the potential consequences of options (1) and (2).⁵⁷ This puts intersex, transgender and non-binary individuals in an untenable, and discriminatory, place with respect to their constitutional right to lawfully purchase firearms and exercise their right to self-defense.

Not only does this compromise the ability of intersex, transgender and non-binary individuals to exercise their constitutional rights, but it may additionally expose FFLs to potential liability under state anti-discrimination laws that protect the rights of intersex, transgender and non-binary individuals in places of public accommodation.⁵⁸

⁵⁵ 27 C.F.R. § 478.124(c)(3)(i); *see also* Best Practices Guide (navigate to “Prohibited Transfers”).

⁵⁶ The Proposed Rule sharpens this dilemma: it would simultaneously amend each of the three regulations to require that forms be executed under penalties of perjury where the form or regulation so provides—confirming that criminal exposure may attach to the very question the Proposed Rule makes impossible to answer both truthfully and consistently with the transferee's verifying identification documents. *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24465-66.

⁵⁷ Under option 2, transgender, non-binary, and intersex individuals may run the risk of being prosecuted for “knowingly mak[ing] false statements” on Form 4473, which may result in “criminal prosecution for a felony and up to 10 years in federal prison.” *See, e.g., Federal Prosecutors Aggressively Pursuing Those Who Lie in Connection with Firearms Transactions*, ATF, Press Release (January 10, 2023), <https://www.atf.gov/news/press-releases/federal-prosecutors-aggressively-pursuing-those-who-lie-connection-firearm-transactions>; *see also*, 18 U.S.C. § 922(d)(1).

⁵⁸ For example, the Illinois Human Rights Act “promote[s] Illinois's public policy of securing for all individuals within Illinois freedom from discrimination on the basis of a [protected characteristic] in places of public accommodation.” *See Windsor Clothing Store v. Castro*, 2015 IL App (1st) 142999, ¶ 49 (citing 775 ILCS 5/1-102(A)). Stores open to the public are places of public accommodation. *Id.* at ¶ 15, *see also*, 775 ILCS 5/5-101 (A); 775 ILCS 5/5-102(A) (explaining it is a civil rights violation to “[d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation[.]”); *see also* 775 ILCS 5/1-103(O-1). Massachusetts law likewise prohibits “any distinction, discrimination or restriction” based on sex or gender identity in a place of public accommodation and declares that all persons have a civil right to its “full and equal accommodations, advantages, facilities and privileges.” Mass. Gen. Laws ch. 272, § 98. The statute expressly defines places of public accommodation to include a “retail store or establishment.” *Id.* § 92A. *See also* N.J. Stat. § 10:5-5; Cal. Civ. Code § 51(b) (“All persons . . . no matter [their protected characteristics] are entitled to the full and equal accommodations . . . in all business establishments”). Hawaii law likewise prohibits “unfair discriminatory practices that deny, or attempt

C. The Proposed Rule Would Harm Public Safety.

As described above in Section II(A), *supra*, “[t]he correct completion of these forms enhances traceability of firearms.”⁵⁹ And information concerning the transferee’s identification is necessary to law enforcement to “link a suspect to a firearm in a criminal investigation” via crime gun tracing.⁶⁰ If and when a firearm is recovered in a crime, law enforcement relies on Forms 4473 to identify individuals tied to that firearm. But the Proposed Rule fundamentally undercuts this purpose and harms public safety. *See* Section II(A)(2), *supra*.

Public safety is furthered when FFLs and prospective buyers record on Forms 4473 information that accurately and properly identifies the buyer and matches the individual’s actual identification documents. *See* Sections II(B), III(B), *supra*. To do otherwise, as this Proposed Rule would, necessarily impedes law enforcement’s ability to identify potentially relevant persons and solve crime. ATF historically has agreed. “By allowing these individuals to select the non-binary category [or sex consistent with as described on their state issued identification] it will better enable FBI and/or State Point-of-Contact make or rule out potential matches during the background process and can assist with criminal investigations.”⁶¹

IV. The Proposed Rule Violates the Administrative Procedure Act.

The Proposed Rule’s definition of “sex” and inclusion of the same within the relevant federal regulations violates the APA. Specifically, ATF’s proposed conduct is both arbitrary and capricious, and is contrary to law.

A. The Proposed Rule is Arbitrary and Capricious.

The Proposed Rule reflects arbitrary and capricious agency action. An agency action is arbitrary and capricious “if it is not reasonable and reasonably explained.”⁶² Agency decisions are not reasonably explained when, among other things, “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency

to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation” based on sex, including gender identity or expression. *See* Haw. Rev. Stat. § 489-3. Public accommodations include “any establishment that sells goods or services at retail.” *Id.* § 489-2.

⁵⁹ *See* Best Practices Guide, (navigate to “ATF Form 4473”).

⁶⁰ *National Tracing Center*, “The Tracing Process,” ATF, <https://www.atf.gov/firearms/tools-services-law-enforcement/national-tracing-center> (last updated September 19, 2024).

⁶¹ *See* ICR Documents, Office of Information and Regulatory Affairs, Office of Management and Budget, “Combined Comments and Responses 4.21.2020,” Response Dan’s Guns, at p. 3, https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202004-1140-006 (last accessed July 26, 2026).

⁶² *Ohio v. Env’t Prot. Agency*, 603 U.S. 279, 292 (2024) (citation omitted).

expertise.”⁶³ Where an agency changes a prior position, such as here, it is required to “display awareness that it *is* changing position” and “must show that there are good reasons” for its new policy.⁶⁴ Moreover, an agency must provide a “more detailed justification” for a change in position where “its prior policy has engendered serious reliance interests that must be taken into account.”⁶⁵

First, ATF fails to acknowledge it is changing position. Instead, it claims that it has always understood sex to mean one’s “immutable biological classification as either male or female and does not include the concept of gender identity.”⁶⁶ This is demonstrably false. During the pendency of the first Trump Administration, in 2019, ATF specifically sought to include a “non-binary” option under Question 14 (which was ultimately added), demonstrating that ATF has not, as it says now, viewed sex as a purely binary choice divorced from the “concept of gender identity.”⁶⁷ Moreover, the current Form 4473 acknowledges that relevant identification documents permit an individual to change their gender marker, specifically instructing them to record information consistent with the state issued identification documents.⁶⁸ This failure to acknowledge that it has changed position demonstrates that the agency action is arbitrary and capricious.

Second, ATF has failed to consider an important aspect of the problem in defining sex as it does in the Proposed Rule. It does not address the problem created by having conflicting information between the verifying identification document and the form’s verified identifying information. This means individuals who accurately complete the form based on their state-issued identification documents, which identify their sex consistent with their gender identity, seemingly would be denied the ability to purchase firearms despite being otherwise lawful purchasers, given this impending information conflict and how individuals would be required to answer Question 14. Ignoring this issue demonstrates that this agency action is arbitrary and capricious.

Third, ATF does not at all consider the serious reliance interests the Proposed Rule negatively impacts, failing entirely to assess those interests and weight them against competing policy concerns.⁶⁹ Those interests are concrete here: some States, including Illinois, Massachusetts, New York, and New Jersey, and Hawaii, have enacted laws allowing for the issuance of identification documents bearing sex designations consistent with one’s gender

⁶³ *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983).

⁶⁴ *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (emphasis in original).

⁶⁵ *Id.* (citation omitted).

⁶⁶ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24463.

⁶⁷ See *Firearms Transaction Record/Registro de Transaccion de Armas De Fuego (ATF Form 4473 (5300.9) (OMB Number 1140-0020)*, ATF, <https://www.atf.gov/rules-and-regulations/form-and-information-collection-notices/firearms-transaction-record/registro-de-transaccion-de-armas-de-fuego-atf-form-4473-5300-9-omb-number-1140-0020-0> (last visited July 25, 2026) (navigate to “Form,” marked “DRAFT,” see Question 14); see also *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24463; see also ATF Form 4473, Question 14.

⁶⁸ ATF Form 4473, Question 14, “Sex,” at p. 4.

⁶⁹ *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30-32 (2020); *Fox*, 556 U.S. at 515.

identity, including non-binary; FFLs have built their verification and compliance practices around ATF's instructions; and NICS matching depends on consistency between the information recorded on the form and the identification presented. *See* Sections II(B), III(A)-(C), *supra*. The Proposed Rule nowhere acknowledges, much less assesses or weighs, any of these reliance interests.

Fourth, ATF's segmented treatment of plainly interlocking actions independently demonstrates the absence of reasoned decision-making. ATF proposes here to define "sex" by regulation while, in separate and simultaneous proceedings, it proposes to revise Form 4473 itself and seeks, through an information collection request, to remove the very "Non-Binary" option that its current instruction presupposes.⁷⁰ ATF's assumption of the outcome of those separate, unfinalized proceedings, demonstrates that it is depriving the public of any integrated analysis of how the definition proposed here would operate on the forms ATF actually intends to adopt.

Fifth, ATF failed to consider obvious, less harmful alternatives—most plainly, retaining the current instruction, which directs transferees to answer Question 14 consistently with the identification documents FFLs must examine, and which ATF adopted precisely because transferees found the question difficult to complete when their identification did not bear a binary designation. *See* Section II(B), *supra*. If ATF's objective is to "resolve any potential confusion on how to fill out ATF forms," the existing instruction accomplishes it; the Proposed Rule creates the very conflict between form and identification that it purports to eliminate.⁷¹ The failure to consider an obvious alternative is itself arbitrary and capricious.⁷²

Sixth, ATF's Proposed Rule is additionally arbitrary and capricious because it is not reasonable and reasonably explained. The Proposed Rule is not reasonable because, as described above, it fundamentally undercuts the purpose of ATF's recordkeeping obligations, including with respect to Form 4473. By requiring, via regulation, forms to be filled out with an individual's "biological classification as either male or female," regardless of what an individual's government-issued identification states, ATF not only compromises an individual's ability to purchase a firearm based solely on their transgender or non-binary status, but puts FFLs at risk for violating state anti-discrimination laws, and, perhaps most critically, impedes law enforcement's ability to properly identify individuals tied to crime guns. *See* Sections II(A), III(B)-(C), *supra*.

Finally, ATF points to only two sources to justify its Proposed Rule: 1) a singular district court case that does not, in any way, relate to firearms or ATF; and 2) President Trump's Executive Order 14168.⁷³ Neither of these sources offer any support for the Proposed Rule, or provide any

⁷⁰ *See* *Revising Firearms Transaction Record, "Form 4473,"* 91 Fed. Reg. 25432 (May 8, 2026); 60-Day Notice of Information Collection Request: Form 4473, 91 Fed. Reg. 25448 (May 8, 2026); *see also* FN 38, *supra*.

⁷¹ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24463

⁷² *State Farm*, 463 U.S. at 46-51 (finding rescission arbitrary where the agency gave no consideration to an obvious alternative within the scope of the existing standard).

⁷³ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24463.

reason for ATF's change in position.

ATF's reliance on *Bibby v. Philadelphia Coca Cola Bottling Co.*, 85 F. Supp. 2d 509 (E.D. Pa. 2000), reflects the arbitrariness of the decision-making here. There, in 2000, a district court held that discrimination on the basis of sexual orientation is not discrimination on the basis of sex under Title VII, which the court concluded by, *inter alia*, "turn[ing] to a dictionary definition."⁷⁴ *Bibby* has no bearing on the issue at hand, and could not guide any analysis in any event as it is no longer good law, having been superseded by the Supreme Court's holding in *Bostock v. Clayton Co.* in 2020.⁷⁵

ATF's reliance on Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, likewise provides no support for the Proposed Rule and demonstrates that the Proposed Rule was not the result of reasoned decision-making. Instead, it was the mere obedience of the President's instruction to make "changes to agency...regulations [and] forms[.]"⁷⁶

The Proposed Rule is arbitrary and capricious and should be withdrawn.

B. The Proposed Rule is Contrary to Law.

The changes in this Proposed Rule fundamentally thwart the purpose of forms authorized under the GCA, the NFA, and federal explosives laws, and thus violate the APA because they are contrary to law. Under the APA, courts are "to set aside federal agency action that is 'not in accordance with law.'"⁷⁷ This includes regulations "that are contrary to clear congressional intent."⁷⁸ ATF purports to promulgate the revisions to Form 4473 (and other forms implicated by the regulations in the Proposed Rule) via its authority under the GCA, NFA, and federal explosives laws.⁷⁹ The two central purposes of the GCA are to ensure firearms transactions comply with federal and state law at the time of sale and serve as a reliable and accurate source of information for law enforcement investigating crimes and tracing firearms, thereby promoting public safety. *See* Sections II(A), III(C), *supra*.

⁷⁴ *See id.*, relying on *Bibby v. Philadelphia Coca Cola Bottling Co.*, 85 F. Supp. 2d 509, 515-516 (E.D. Pa. 2000).

⁷⁵ *See Bostock v. Clayton Cnty.*, 590 U.S. 644, 660 (2020) ("it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.").

⁷⁶ Exec. Order No. 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8,615, at Section 2(a) and Section 7(i) (Jan. 20, 2025).

⁷⁷ *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (quoting 5 U.S.C. § 706(2)(A)).

⁷⁸ *United Farm Workers v. United States Dep't of Lab.*, 509 F. Supp. 3d 1225, 1235 (E.D. Cal. 2020) (internal quotation marks omitted); *see also Fed. Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981) ("[Courts] must reject administrative constructions of the statute, whether reached by adjudication or by rulemaking, that are inconsistent with the statutory mandate or that frustrate the policy that Congress sought to implement.") (citations omitted).

⁷⁹ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24463.

The Proposed Rule not only fails to further the GCA's purposes but also actively frustrates those goals and the congressional intent underlying the Act (and others) where the Proposed Rule invites confusion and, in some instances, requires inaccurate information on Form 4473. The Proposed Rule runs afoul of the congressional intent of the forms prescribed under the relevant regulation and, accordingly, is contrary to law.

C. The Proposed Rule Disregards Its Federalism Implications.

The Proposed Rule also directly implicates state prerogatives: it instructs individuals to disregard the sex designations that certain States are required by their own statutes to issue, and it exposes FFLs to liability under state anti-discrimination law. *See* Sections III(A)-(B), *supra*. Executive Order 13132 obligates agencies to assess the federalism implications of rules with substantial direct effects on the States and to consult with state officials before adopting regulations that conflict with state law.⁸⁰ Yet, the Proposed Rule makes clear that ATF neither consulted with the States nor meaningfully assessed the Proposed Rule's effects on state identification systems and state law.⁸¹ This failure supplies an additional, independent basis for withdrawal, and the States preserve all objections to the Proposed Rule under 5 U.S.C. § 706(2), including that it is arbitrary and capricious, contrary to law, in excess of statutory authority, and promulgated without observance of procedure required by law.

IV. Conclusion

If finalized, the Proposed Rule will necessarily result in either the curtailment of an individual's right to lawfully purchase firearms and exercise their right to self-defense based on their intersex, transgender or non-binary status, or, alternatively, result in inaccurate recordkeeping that will negatively impact law enforcement's ability to investigate crimes and trace firearms. Because the Proposed Rule conflicts with state law and policies, undermines public safety and the purpose of the required record-keeping, will cause significant confusion, will compromise the right of individuals to lawfully purchase firearms, and violates the Administrative Procedure Act, the States urge ATF to withdraw the Proposed Rule.

Sincerely,



Kwame Raoul
Illinois Attorney General

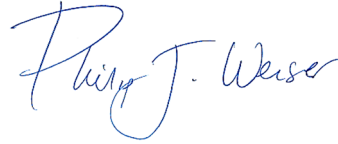


Kristin K. Mayes
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⁸⁰ Exec. Order No. 13132, *Federalism*, 64 Fed. Reg. 43255 (Aug. 4, 1999).
⁸¹ *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462, 24464.



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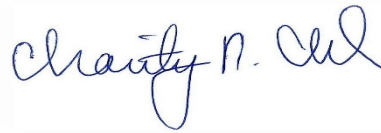
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August 4, 2026

Via Federal eRulemaking Portal

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Re: Multistate Comment on Proposed Rule: Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms
Docket No. ATF-2026-0074; RIN 1140-AB01
91 Fed. Reg. 24,424 (May 6, 2026)

Dear Acting Attorney General Blanche and Director Cekada,

We, the Attorneys General of New Jersey, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington (States), object to this Proposed Rule. The Proposed Rule rescinds a critically important 2024 ATF rule that clarified which firearms sellers are subject to federal-law requirements and closed a series of loopholes. In attempting to reopen those loopholes, ATF is violating the Bipartisan Safer Communities Act and other federal statutes. And it does so in ways that make it easier for individuals to buy firearms without going through critical background checks—making everyone less safe.

The Proposed Rule will make the public less safe. The Proposed Rule rescinds parts of ATF’s 2024 final rule, “Definition of ‘Engaged in the Business’ as a Firearms Dealer” (2024

Rule),¹ that clarified federal licensing requirements² and closed the so-called “fire-sale loophole”—the latter of which enabled former federal firearms licensees (FFLs) to avoid background check requirements when liquidating their business inventory.³ In particular, the Proposed Rule rescinds the rebuttable presumptions that a person is “engaged in the business” of dealing firearms;⁴ rescinds parts of the 2024 Rule’s definition of “personal collection” such that more kinds of firearms will be exempted from the definition of “engaged in the business”;⁵ and rescinds several provisions setting forth the obligations of licensees discontinuing their business,⁶ which may make it easier for former licensees to divert their inventory to unregulated markets. These changes jeopardize the significant progress the federal government has made—including through the 2024 Rule—in closing loopholes that facilitated the sale and transfer of firearms by unlicensed dealers. These changes will also harm the States’ interest in preventing unlawful firearms sales (including those designed to circumvent background checks) and in curtailing interstate firearms trafficking.

The Proposed Rule is thus arbitrary and capricious and contrary to law. The proposal undermines and conflicts with federal statutes, including the Bipartisan Safer Communities Act (BSCA);⁷ ignores many of the serious public-safety harms it will exacerbate; is at odds with several of its own stated goals; and impermissibly relies on conclusory and speculative justifications. Simply, the Proposed Rule is not the product of “reasoned decisionmaking,” as required by the Administrative Procedure Act (APA).⁸

While those flaws are apparent on the face of the Proposed Rule, it was also issued as part of a broader deregulatory package that exacerbates the harm to public safety. While ATF attempts to justify this package as part of “streamlining regulations” and “reducing burden on dealers and gun owners alike,” these proposals do not each operate in isolation.⁹ The uncertainty and incentives to engage in unlicensed dealing created by the Proposed Rule in particular must be understood in the context of ATF’s broader efforts to heighten the standard for proving culpability for straw purchasing¹⁰ and other violations by FFLs,¹¹ weaken multiple point-of-sale controls including loosening residence requirements and verification for firearms purchases,¹² and allow remote verification of identity documents for firearm purchases,¹³ among other changes. So while the Proposed Rule is unlawful and harmful to public safety on its own, it will have even more

¹ Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. 28,968 (Apr. 19, 2024).

² *Id.* at 28,975–81.

³ *Id.* at 28,982 & n.105.

⁴ Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. 24,424, 24,426–27 (proposed May 6, 2026).

⁵ *Id.* at 24,429–30.

⁶ *Id.* at 24,430.

⁷ Pub. L. No. 117-159, 136 Stat. 1313 (2022).

⁸ *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983).

⁹ *ATF’s New Era of Reform*, Bureau of Alcohol, Tobacco, Firearms, & Explosives (May 12, 2026), <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform>.

¹⁰ Firearms Transactions and Straw Purchases, 91 Fed. Reg. 24,448 (proposed May 6, 2026).

¹¹ Defining “Willfully” for Firearms Violations, 91 Fed. Reg. 25,201 (proposed May 8, 2026).

¹² Revising Firearms Transaction Record, “Form 4473,” 91 Fed. Reg. 25,432 (proposed May 8, 2026).

¹³ Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. 25,216 (proposed May 8, 2026).

severe and damaging consequences when operating in tandem with these broader deregulatory efforts.

I. Background.

A. Statutory and Regulatory Background.

The Gun Control Act of 1968 (GCA)¹⁴ was enacted to aid law enforcement in fighting crime¹⁵ and, in particular, to address the pervasive problem of interstate firearms trafficking.¹⁶ Core to the GCA is the judgment “that there was a serious problem of individuals going across State lines to procure firearms which they could not lawfully obtain or possess in their own State,” and that absent federal restrictions on firearms trafficking, state and local law enforcement would not be able “to control this traffic within their own borders through the exercise of their police power.”¹⁷ Congress chose to regulate firearms dealers by requiring that all persons “engaged in the business” of selling firearms obtain a federal firearms license and comply with basic safety measures.¹⁸ Among other things, federal law prohibits FFLs from transferring firearms to prohibited persons such as felons, individuals with domestic violence restraining orders, or those with outstanding arrest warrants.¹⁹ FFLs are also required to initiate background checks before transferring firearms and to maintain records of firearms sales that can be used in criminal investigations and enforcement.²⁰

In 1986, Congress amended the GCA to define “engaged in the business” in reference to a person’s “principal objective of livelihood and profit.”²¹ The ambiguity about the meaning of this phrase created loopholes that unlicensed dealers used to bypass the GCA’s requirements—and thus to sell firearms without following federal background-check and record-keeping requirements. At the same time, some States filled these gaps by regulating firearms transfers beyond the requirements of federal law, including by requiring background checks for all or nearly all firearms purchases from unlicensed sellers and by licensing state firearms dealers.²² But the States’ ability to prevent this problem is hampered by the reality of interstate firearms trafficking.

That status quo lasted for more than a quarter century. In the aftermath of a series of mass shootings, including one in which a prohibited person circumvented background check

¹⁴ Pub. L. No. 90-618, 82 Stat. 1213 (1968).

¹⁵ *Id.* § 101, 82 Stat. at 1213.

¹⁶ *Huddleston v. United States*, 415 U.S. 814, 824 (1974).

¹⁷ *Mance v. Sessions*, 896 F.3d 699, 705–06 (5th Cir. 2018) (citing Congress’ findings in the GCA and Crime Control Act of 1968).

¹⁸ *See Abramski v. United States*, 573 U.S. 169, 172–73 (2014); *Huddleston*, 415 U.S. at 824.

¹⁹ 18 U.S.C. § 922(d).

²⁰ *Id.* §§ 922(t), 923(g); *Abramski*, 573 U.S. at 181 (noting “Congress’s principal purpose” in enacting GCA was “to curb crime by keeping firearms out of the hands of those not legally entitled to possess them” (citing *Huddleston*, 415 U.S. at 824)).

²¹ Firearms Owners’ Protection Act, Pub. L. No. 99-308, § 101(6), 100 Stat. 449, 450 (1986).

²² *See, e.g.*, N.J. Stat. Ann. § 2C:58-3(a)(3); N.J. Stat. Ann. § 2C:58-2(a); N.Y. Gen. Bus. Law §§ 875-A to -I, 898; N.Y. Penal Law § 400.00; Firearm Dealer License Certification Act, 430 Ill. Comp. Stat. 68; Mass. Gen. Laws ch. 140, §§ 122, 123, 128A; Cal. Penal Code §§ 26805, 27545, 27310, 28050.

requirements to obtain a firearm from an unlicensed dealer,²³ Congress passed the BSCA, which broadened the definition of “engaged in the business” and eliminated prior ambiguities around the requirement to be licensed as an FFL, thereby increasing the number of firearms transfers subject to the GCA’s background check and recordkeeping requirements.²⁴ Instead of defining “engaged in the business” in terms of a “principal objective of livelihood and profit,” the BSCA defined a person “engaged in the business” as:

a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business *to predominantly earn a profit* through the repetitive purchase and resale of firearms[.]²⁵

A person seeks “to predominantly earn a profit” if “the intent underlying the sale or disposition of firearms is predominantly one of obtaining pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection.”²⁶ Nevertheless, Congress preserved a narrow carveout for those “who make[] 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,” from this definition.²⁷

On April 19, 2024, ATF finalized the 2024 Rule, implementing the BSCA’s revised statutory language and clarifying when a person is “engaged in the business” of dealing firearms.²⁸ ATF estimated that anywhere from 25,563 to 95,505 previously unlicensed individuals would now need federal licenses, which principally means that they would have to take basic steps like conducting background checks and keeping firearms sale records as required by the GCA.²⁹ As a result, ATF concluded that the 2024 Rule will “help[] prevent firearms from being sold to felons or other prohibited persons, who may then use those firearms to commit crimes and acts of violence,”³⁰ and “help Federal, State, local, and Tribal law enforcement solve crimes involving firearms through crime gun tracing.”³¹

²³ The BSCA was enacted in the wake of a series of mass shootings, including in Odessa, Texas where the perpetrator “circumvented the NICS background check process” by purchasing an AR-15 rifle from an unlicensed private seller. Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. at 28,971–72, 28,971 nn. 26–27 (citing Acacia Coronado & Alex Samuels, *Death Toll in Midland-Odessa Mass Shooting Climbs to Eight, Including the Shooter*, Texas Tribune (Aug. 31, 2019), <https://www.texastribune.org/2019/08/31/odessa-and-midland-shooting-30-victims-reports-say/>; Press Release, U.S. Dep’t of Justice, Man Who Sold Midland/Odessa Shooter AR-15 Used in Massacre Sentenced for Unlicensed Firearms Dealing (Jan. 7, 2021), <https://www.justice.gov/usao-ndtx/pr/man-who-sold-midlandodessa-shooter-ar-15-used-massacre-sentenced-unlicensed-firearms>).

²⁴ William J. Krouse, Cong. Rsch. Serv., IF12197, Firearms Dealers “Engaged in the Business” 2 (2022), <https://crsreports.congress.gov/product/pdf/IF/IF12197>; see *infra* Section II.A.

²⁵ 18 U.S.C. § 921(a)(21)(C) (emphasis added).

²⁶ 18 U.S.C. § 921(a)(22).

²⁷ 18 U.S.C. § 921(a)(21)(C).

²⁸ Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. at 28,968.

²⁹ *Id.* at 29,071–73.

³⁰ *Id.* at 29,085.

³¹ *Id.* at 28,988.

B. The Proposed Rule.

On May 6, 2026, ATF issued the Proposed Rule, which rescinds three core parts of the 2024 Rule that provided clarification to regulated entities and the public regarding the scope and meaning of “engaged in the business”—as well as the obligations of licensees in disposing of their firearms inventory as part of a discontinuance of business.

First, the Proposed Rule rescinds the 2024 Rule’s list of specific examples of facts that would in ATF’s judgment establish rebuttable presumptions (or “fact-pattern presumptions”) about when that person is in fact engaged in the business of dealing firearms and when that person in fact has the intent to predominantly earn a profit.³² The Proposed Rule deletes language from the definition of “predominantly earn a profit” which clarifies that the *intent* to profit does not require *realization* of the intended pecuniary gain.³³

Second, the Proposed Rule rescinds in part the agency’s prior definition of “personal collection” (a term undefined in the BCSA), which helps define the narrow exception to the definition of “engaged in the business” in 18 U.S.C. § 921(a)(21)(C) and 27 C.F.R. § 478.13(a).³⁴ The 2024 Rule provided a general definition of “personal collection” to include certain firearms accumulated “for study, comparison, exhibition” or “for a hobby,” but excludes “firearms accumulated primarily for personal protection.”³⁵ The Proposed Rule rescinds that general definition of “personal collection” in its entirety.³⁶

Third, it also rescinds the definition of “former licensee inventory,” which, along with other provisions regulating an FFL’s discontinuation of business, prohibits a former licensee from disposing of business inventory more than 30 days following the discontinuation of business.³⁷ Under the 2024 Rule, a former licensee must, within 30 days after discontinuing business, either sell any firearms in their business inventory to other licensees, or transfer them into their personal collection.³⁸ But the Proposed Rule gives former licensees a greater ability to continue reselling firearms without being presumed to be “engaged in the business.”

II. The Proposed Rule is Arbitrary and Capricious.

The Proposed Rule is arbitrary and capricious because it undermines the BSCA’s central requirements to provide clarity and guidance to regulated entities and the public, while at the same time overlooking and even exacerbating the public-safety problem that motivated the BCSA’s passage. The Proposed Rule further relies on conclusory statements, speculative harms, and flawed

³² Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,430–31; *see* 27 C.F.R. § 478.13(c)(1)–(5) (listing fact patterns when a person shall be presumed to be engaged in the business of dealing firearms); *id.* § 478.13(d)(2) (listing seven presumptions when a person shall be presumed to have the intent to predominantly earn a profit).

³³ Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,436.

³⁴ *Id.* at 24,429.

³⁵ *Id.*

³⁶ *Id.* at 24,430.

³⁷ *Id.*

³⁸ Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. at 29,090 (promulgating definition of “former licensee inventory” in 27 C.F.R. § 478.11).

evidence, and contradicts or rejects the factual and legal findings underlying the 2024 Rule without adequate explanation. It also fails to consider straightforward reasonable alternatives within the ambit of the prior policy, instead opting for the drastic option of rescission. This falls well short of the APA's requirement that agencies engage in "reasoned decisionmaking,"³⁹ including by "show[ing] that there are good reasons for the new policy" and providing a "detailed justification" when the agency changes course.⁴⁰

A. The Proposed Rule Exacerbates the Problem of Unlicensed Dealing, Thus Undermining the Central Public Safety Aims of the BSCA.

The "fact-pattern presumptions" in the 2024 Rule provide licensed entities and the public with readily comprehensible examples of what the statutory terms "engaged in the business" and "personal collection" mean (including by defining "former licensee inventory" as something distinct from a "personal collection"). The Proposed Rule, by rescinding the "fact-pattern presumptions," would reintroduce confusion into an area of regulation that has long been fraught with both intentional and unintentional noncompliance. Congress passed the BSCA to reduce "confusion about the GCA's definition of 'engaged in the business,' as it pertained to individuals who bought and resold firearms repetitively for profit," and the BSCA's sponsors specifically sought to "clarify who should be licensed, eliminat[e] a 'gray' area in the law, [and] ensur[e] that one aspect of firearms commerce is more adequately regulated."⁴¹ Members of Congress anticipated that more sellers would be required to become FFLs under the new definition, which would, in turn, lead to more firearms sales that require a background check.⁴²

The 2024 Rule advanced these aims by clarifying the meanings of the BSCA's core terms. Because the BSCA changed a statutory definition in effect for over 25 years, stakeholders and the public needed clear guidance regarding the new definition—which the 2024 Rule's presumptions provided, drawing on ATF's "enforcement efforts, regulatory functions, knowledge of existing case law, and subject-matter expertise."⁴³ Under the APA, "agencies may adopt evidentiary presumptions provided that the presumptions (1) shift the burden of production and not the burden of persuasion, and (2) are rational."⁴⁴ Here, the rebuttable presumptions amply satisfy both requirements because they shift only the burden of production and are undisputedly "rational"⁴⁵

³⁹ *State Farm*, 463 U.S. at 52.

⁴⁰ *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009).

⁴¹ Definition of "Engaged in the Business" as a Dealer in Firearms. 89 Fed. Reg. 28,972 & nn. 29–30 (quoting William J. Krouse, Cong. Rsch. Serv., IF12197, Firearms Dealers "Engaged in the Business" 2 (2022), <https://crsreports.congress.gov/product/pdf/IF/IF12197>) (citation modified)); *see also* 168 Cong. Rec. H5906 (daily ed. June 24, 2022) (statement of Rep. Jackson Lee); 168 Cong. Rec. S3055 (daily ed. June 22, 2022) (statement of Sen. Chris Murphy).

⁴² *See, e.g.*, 168 Cong. Rec. S3105 (daily ed. June 23, 2022) (statement of Sen. Martin Heinrich); 168 Cong. Rec. S3118 (daily ed. June 23, 2022) (statement of Sen. Jack Reed); 168 Cong. Rec. H5904 (daily ed. June 24, 2022) (statement of Rep. Jerrold Nadler).

⁴³ Definition of "Engaged in the Business" as a Dealer in Firearms, 89 Fed. Reg. at 28,975.

⁴⁴ *Cablevision Systems Corp. v. FCC*, 649 F.3d 695, 716 (D.C. Cir. 2011) (citations omitted); *see also Cole v. U.S. Dep't of Agric.*, 33 F.3d 1263, 1267 (11th Cir. 1994) ("The law is well established that presumptions may be established by administrative agencies, as long as there is a rational nexus between the proven facts and the presumed facts.").

⁴⁵ *Am. Petroleum Inst. v. Env't Prot. Agency*, 862 F.3d 50, 63 (D.C. Cir. 2017).

since they are based on “firearms purchase-and-sales activities [that] are more likely than not” correlated with being “engaged in the business” of dealing firearms.⁴⁶ They thus provide rational and necessary guidance to affected parties.

While these presumptions apply only in civil and administrative contexts, and can be rebutted with “reliable evidence,” the presumptions help clarify the types of activities that require licensure.⁴⁷ As the Proposed Rule acknowledges, these parts of the 2024 Rule furthered the BSCA’s underlying goals by explicitly describing the types of activities covered by the statutory definition of “engaged in the business.”⁴⁸ By dismissing the presumptions as unnecessary, the Proposed Rule overlooks that it is sacrificing the clearer guidance and regulatory certainty Congress sought to achieve through the BSCA.⁴⁹

Despite purporting to address “confusion around conduct that falls outside the GCA’s definition of engaged in the business,” the Proposed Rule also overlooks that rescinding the “fact-pattern presumptions” may *exacerbate* the confusion about the definition of “engaged in the business,” and thus fails to consider an important aspect of the problem that Congress sought to address through the BSCA. The Proposed Rule does *not* dispute that these “fact-pattern presumptions” all describe a set of facts that would support a finding that a person is “engaged in the business” of dealing firearms.⁵⁰ But rescinding those specific presumptions about what behavior constitutes being “engaged in the business” could reasonably lead dealers to conclude that engaging in the specific behavior described in those presumptions is no longer considered conduct that constitutes being “engaged in the business” of firearms dealing, undermining overall compliance. In other words, removing the fact-pattern presumptions does not mean that conduct is now lawful; it simply means confusion will reign. The agency thus had to reasonably explain why a lack of clarity was better than clear presumptions, but it has failed to sufficiently do so in the current proposal.

Finally, until the 2024 Rule addressed it, the so-called “fire-sale loophole” allowed FFLs ostensibly discontinuing their business to transfer their business inventory of firearms to their “personal collection.” Once re-classified as part of a “personal collection,” the same firearms that had been part of the business inventory would then often be sold in an unregulated market. This often resulted in diversion of those firearms to the illegal market, contributing to a significant public safety problem.⁵¹ The Proposed Rule acknowledges that the 2024 Rule directly addressed

⁴⁶ Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. at 28,975; *see id.* at 28,978–79 (describing the basis for each presumption).

⁴⁷ *Id.* at 28,975–76 (noting that the presumptions “help unlicensed persons, industry operations personnel, and others determine when a person is likely ‘engaged in the business’ requiring a dealer license”).

⁴⁸ *See* Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,426–27.

⁴⁹ Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. at 29,083 (noting that the 2024 Rule “helps ensure such persons obtain licenses and comply with the safeguards in the GCA”).

⁵⁰ *E.g.*, Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,427 (“To be clear, discarding the presumptions does not mean that a person who engages in behavior identified by the presumptions will not be found to be engaged in the business.”).

⁵¹ *See* Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. at 28,982 n. 105 (citing case of dealer who, after his license was revoked, transferred about 700 guns to his personal collection and continued selling them without recordkeeping).

this problem, finding that it “limits a former licensee to disposing of the inventory within 30 days after it discontinues business and effectively prevents former licensees from reclassifying inventory purchased repetitively with the intent to resell for profit while licensed as personal firearms in a “personal collection” after they become unlicensed.”⁵² Yet the Proposed Rule would undo the 2024 Rule’s steps to close this loophole, leaving in their place only ATF’s admission that “some process for addressing the inventory of former licensees is appropriate.”⁵³

This change risks resuming the diversion of firearms from former licensees into the illegal market.⁵⁴ These are firearms that were part of a business inventory, repetitively purchased for resale with the “predominant intent to profit.”⁵⁵ The lack of oversight over FFLs who take such firearms and then seek to deem them their “personal collection” at resale creates confusion for former licensees and law enforcement. The Proposed Rule arbitrarily risks reopening this loophole and reintroduces ambiguity—without sufficient reasons why.

B. The Proposed Rule Fails to Consider the Public Safety Harms of Unlicensed Dealing and its Impact on Law Enforcement.

The Proposed Rule is also arbitrary and capricious because it ignores the threat to public safety posed by unlicensed dealing and its effects on law enforcement. The Proposed Rule will most likely increase unlicensed dealing (including sales to prohibited persons), which exacerbates the epidemic of gun violence in communities across the United States and undermines States’ ability to prevent and investigate violent crime. Despite admitting that one result of rescinding the rebuttable presumptions is a “potential increase in persons who should be licensed remaining unlicensed”⁵⁶ and despite conceding that this risk is squarely within the harms Congress sought to prevent in enacting the GCA, the Proposed Rule dismisses the resulting threat to public safety as “de minimis.”⁵⁷ ATF’s failure to give these harms serious consideration illustrates the defects in its decisionmaking.⁵⁸

Gun violence continues to have a severe impact across the country, including on the States’ residents, and unlicensed dealing fuels this epidemic. Gun violence, including mass violence, domestic violence, and suicide—which makes up the largest share of gun deaths in the country⁵⁹—

⁵² Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,430.

⁵³ *Id.*

⁵⁴ See Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. at 28,982 & n.105; Definition of “Engaged in the Business” as a Dealer in Firearms, 88 Fed. Reg. 61,993, 62,006–07 (proposed Sep. 8, 2023).

⁵⁵ Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. at 29,051.

⁵⁶ Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,432.

⁵⁷ *Id.* at 24,432–33

⁵⁸ See *State Farm*, 463 U.S. at 43 (holding that it is arbitrary and capricious to “entirely fail[] to consider an important aspect of the problem”).

⁵⁹ See John Gramlich, *What the Data Says About Gun Deaths in the U.S.*, Pew Research Center (Apr. 28, 2026), <https://www.pewresearch.org/short-reads/2026/04/28/what-the-data-says-about-gun-deaths-in-the-us/>; Bloomberg Sch. of Pub. Health, *Declining Gun Homicides, Record Gun Suicides in 2024*, Johns Hopkins Univ.: Hub (July 10, 2026), <https://hub.jhu.edu/2026/07/10/declining-gun-homicides-record-gun-suicides-2024>.

has continued to occur amidst the rollback of existing firearms regulations, sometimes involving persons prohibited from possessing firearms under federal law.⁶⁰

Unlicensed dealing anywhere in the country threatens public safety because prohibited persons can avoid background checks that would otherwise keep them from purchasing firearms. A study conducted by the ATF along with subject-matter experts supports this conclusion. It found that “prohibited persons determined to get crime guns acquire them through underground crime gun markets that involve unregulated transactions with acquaintances and illicit ‘street’ sources.”⁶¹ An ATF analysis of closed firearms trafficking investigations from 2017 to 2021 also found that unlicensed sellers are the leading source of illegally trafficked firearms: unlicensed dealing appeared in nearly 41% of cases and accounted for more than 68,000 trafficked guns,⁶² and firearms trafficked through unlicensed sellers were used in shootings in 16% of those cases.⁶³ By contrast, an increase in licensed dealers results in more prospective unlawful purchasers being flagged at the point of sale, mitigating the risk that a gun will reach someone who puts the safety of the public, or their own safety, at risk.

But the Proposed Rule does not acknowledge the seriousness of the threat, instead dismissing the public-safety risks from unlicensed dealing as “qualitative and speculative, imposing no quantifiable costs.”⁶⁴ That ignores the foreseeable injuries and loss of life from the increased risk of gun violence resulting from higher rates of unlicensed dealing and the associated economic impacts, which are easily quantifiable. Moreover, the Proposed Rule’s assessment of the costs and benefits is internally inconsistent: in assessing the 2024 Rule’s benefits, it demands proof of an “actual increase in the rate of licensure since the issuance of the [2024 Rule]”,⁶⁵ yet it justifies partial rescission of that rule based on little more than speculation that the prior rule “might” cause individuals to erroneously assume they need to be licensed in order to sell their personal firearms collections.⁶⁶ ATF’s internally inconsistent assessment of the costs and benefits is textbook arbitrariness.

⁶⁰ In one recent example involving domestic violence, mass violence, and suicide, in April 2026, a gunman killed eight children—including 7 of his own—despite having a prior felony conviction that prohibited him from purchasing firearms. *What We Know About the Mass Shooting in Shreveport, Louisiana*, Everytown for Gun Safety (Apr. 21, 2026), <https://www.everytown.org/press/what-we-know-about-the-mass-shooting-in-shreveport-louisiana/>.

⁶¹ Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. at 29,083 (quoting Bureau of Alcohol, Tobacco, Firearms & Explosives, *National Firearms Commerce and Trafficking Assessment (NFCTA)*, Volume II: *Crime Guns*, pt. III, at 41 (Apr. 6, 2026), <https://www.atf.gov/media/15426/download>).

⁶² See Bureau of Alcohol, Tobacco, Firearms & Explosives, *National Firearms Commerce and Tracking Assessment (NFCTA)*, Volume III: *Firearms Trafficking Investigations*, pt. III, at 1 tbl. FTC-02 (Apr. 6, 2026), <https://www.atf.gov/media/20751/download>; Bureau of Alcohol, Tobacco, Firearms & Explosives, *National Firearms Commerce and Trafficking Assessment (NFCTA)*, Volume III: *Firearms Trafficking Investigations*, pt. V, at 10 tbl. TVF-06 (Apr. 6, 2026), <https://www.atf.gov/media/20771/download>.

⁶³ See Bureau of Alcohol, Tobacco, Firearms & Explosives, *National Firearms Commerce and Trafficking Assessment (NFCTA)*, Volume III: *Firearms Trafficking Investigations*, pt. IX, at 5 tbl. IO-06 (Apr. 6, 2026), <https://www.atf.gov/media/14521/download>.

⁶⁴ Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,433.

⁶⁵ *Id.* at 24,434.

⁶⁶ *Id.*

In reality, the public-safety threat is acute. Even States with rigorous laws governing the sale and transfer of firearms cannot entirely prevent the harms associated with unlicensed dealing, because firearms obtained in jurisdictions with lax firearms laws are often trafficked into jurisdictions with stronger laws. Between 2016 and 2020, 27% of traced guns, or 390,154 guns, were recovered in a state other than where they were originally sold, and 74% of those guns were originally purchased in states that have not enacted background check laws beyond the federal floor.⁶⁷ To provide a State-specific example, in 2021, just over half (50.4%) of the firearms recovered by law enforcement in California and successfully traced to a final dealer of record were traced to dealers located in other states.⁶⁸ The cross-border trafficking of firearms means it is increasingly difficult for state background-check laws alone to effectively protect the public without the backstop of a robust federal regulatory framework.⁶⁹ The 2024 Rule was a step in that direction. But the Proposed Rule walks back that progress and will likely lead to more firearm sales involving unlicensed dealers in states that merely abide by the minimum federal requirements.

The Proposed Rule would also undermine crime gun tracing, which ATF has concluded is “one of the most valuable and effective services ATF provides to law enforcement agencies—nationally and internationally—in investigating crimes involving firearms.”⁷⁰ FFLs are required to maintain records that are critical to federal, state, and local law enforcement’s abilities to investigate violent crimes involving firearms. Whenever law enforcement recover firearms used in crimes, that firearm can provide important evidence to identify the perpetrator and any gun trafficking networks. State or local law enforcement submit manufacturer and serial number information to ATF for tracing, and this information is then used to identify both initial and secondary purchasers as leads for further investigation.⁷¹ Crime gun tracing is also a critical strategy to identify straw purchasers who are frequently the “lynchpin[s] of most firearms trafficking operations.”⁷² ATF’s ability to trace crime guns depends heavily on records kept by

⁶⁷ Everytown Rsch & Pol’y, *Five Things to Know About Crime Guns, Gun Trafficking, and Background Checks* (May 24, 2021), <https://everytownresearch.org/report/five-things-to-know-about-crime-guns/>. Massachusetts’s experience is illustrative: although it licenses dealers, restricts transfers by unlicensed persons to license-holders who have passed a background check, and requires reporting of every transfer, in 2023, more than 65% of recovered crime guns were first sold outside the Commonwealth. See Mass. Gen. Laws ch. 140, §§ 122, 123, 128A; St. 2024, c. 135; Bureau of Alcohol, Tobacco, Firearms & Explosives, *Firearms Trace Data: Massachusetts – 2023*, <https://www.atf.gov/resource-center/firearms-trace-data-massachusetts-2023> (last visited July 27, 2026).

⁶⁸ See Cal. Dep’t of Justice, Off. of Gun Violence Prevention, *2023 Data Report: The Impact of Gun Violence in California* 17–18 (Aug. 2023), <https://oag.ca.gov/system/files/media/OGVP-Data-Report-2022.pdf>.

⁶⁹ Brian Knight, *State Gun Policy & Cross-State Externalities: Evidence from Crime Gun Tracing*, 5 Am. Econ. J.: Econ. Pol’y 200, 224 (2013) (concluding that extending licensing requirements to dealers in states with little to no firearms regulations will decrease the interstate trafficking of firearms into other states and “eliminate incentives for trafficking”).

⁷⁰ Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. at 29,083 (concluding that increased licensing of FFLs “will enhance the capacity of the Department to successfully complete crime-gun traces for law enforcement partners globally”).

⁷¹ *Id.* (noting that “[c]rime-gun tracing is one of the most valuable and effective services ATF provides to law enforcement agencies,” and in FY2022, “the Department performed over 623,000 crime-gun traces . . . [including] 27,156 . . . deemed ‘urgent,’” encompassing firearms used in “mass shootings, homicides, bank robberies, and other immediate threats to officer and public safety”).

⁷² *Id.*

FFLs, and thus private sales present a crime-gun-tracing impasse.⁷³ The 2024 Rule shifted a significant number of formerly unlicensed sales to licensed dealers, enhancing the ATF's trace capacities. The Proposed Rule's rescission of those steps would diminish the ATF's capacity for crime gun tracing, resulting in increased threats to public safety and hampering law enforcement's ability to solve past crimes and prevent future crimes.

Last, the Proposed Rule arbitrarily fails to consider or justify the ways in which it contributes to the cumulative public-safety harms from ATF's broader deregulatory package. In particular, ATF is simultaneously proposing to require a heightened mens rea for proving a licensee's violations of federal firearms regulations, reduce incentives for FFLs to police for straw purchasing, eliminate reliable residence identification requirements for firearm purchases, and allow more firearm sales to take place over the Internet and without a background check—all of which will make it easier for firearms dealers to sell firearms while avoiding licensure and/or sell firearms without undergoing background checks. Indeed, ATF has publicly emphasized that it views these related deregulatory changes as operating in tandem.⁷⁴ Having presented these proposals to the public as a coordinated package, ATF cannot rationally evaluate this Proposed Rule without assessing these proposals' aggregate effect on unlicensed dealing, the background check system, and the effectiveness of crime-gun tracing. So the Proposed Rule not only fails to account for the risks to public safety it produces in isolation, it also ignores the broader ways in which it exacerbates the aggregate harm to public safety from this suite of interrelated deregulatory changes.

C. The Proposed Rule's Stated Justifications Are Unsupported or Even Refuted by the Evidence Before the Agency.

In addition to failing to consider the life-or-death consequences of the rescissions, the Proposed Rule reflects arbitrary decision-making because its stated justifications are speculative, conclusory, and inconsistent with ATF's previous factual findings. The Proposed Rule justifies rescinding the rebuttable presumptions by emphasizing a "serious risk of abuse in civil and administrative proceedings" and the possibility that the presumptions could be "used erroneously."⁷⁵ But it fails to identify a single example in which such abuse actually occurred. ATF simply concludes, without explanation, that courts may be at risk of using these presumptions to shift the burden of proof, rather than the burden of production, and treats that *possibility* as sufficient justification to rescind existing rules. Indeed, the Proposed Rule acknowledges that these are unsupported assumptions, conceding that it "lacks the data necessary to quantify such savings" from "reduc[ing] the perceived risk of over-enforcement" and that "this proposed rule would not have any quantifiable monetary cost savings."⁷⁶ Moreover, ATF fails to acknowledge that rebuttable presumptions are used in the GCA itself, as well as ATF's own implementing regulations, as the 2024 Rule recognized.⁷⁷ That same rule also considered the precise burden-

⁷³ *Id.* at 29,083 ("When a firearm is recovered in a criminal investigation and submitted for tracing, ATF is often able to identify the last known purchaser through records maintained by the licensee When a firearm is transferred by an unlicensed person, however, such records rarely exist."); *see also id.* at 28,988.

⁷⁴ *See ATF's New Era of Reform*, *supra* note 9 (presenting these proposals as parts of a coordinated reform package).

⁷⁵ Revising Regulations Defining "Engaged in the Business" as a Dealer in Firearms, 91 Fed. Reg. at 24,426–27.

⁷⁶ *Id.* at 24,432.

⁷⁷ 89 Fed. Reg. at 28,976 & n.65.

shifting objection and expressly concluded that the presumptions shift only the burden of production, not persuasion, and do not apply in criminal proceedings.⁷⁸ The Proposed Rule never explains why that conclusion was mistaken; it merely hypothesizes that a court might misread the rule. Given that rebuttable presumptions are already baked into the statutory structure, ATF needed to explain why it believes these particular rebuttable presumptions are uniquely susceptible to arbitrary enforcement or misapplication by courts.

The Proposed Rule also justifies rescinding these rebuttable presumptions and the definition of “personal collection” by claiming they are “unnecessary,” asserting, without support, that “the statutory definition is readily comprehensible.”⁷⁹ But ATF identifies no support for its conclusion that these concepts are easily understood, and this finding conflicts with caselaw prior to the 2024 Rule that recognized the inherent difficulty of resolving the fact-intensive nature of the inquiry, as well as the 2024 Rule itself.⁸⁰

The Proposed Rule’s finding that the 2024 Rule was ineffective is likewise based on incomplete and flawed evidence. The primary support for this claim is data showing that new applications for Type 01 licenses (Dealer in Firearms Other Than Destructive Devices) decreased from 2021 through 2025, including a decrease from 4,350 applications in fiscal year 2024 when the 2024 Rule took effect to 4,160 applications in fiscal year 2025.⁸¹ But major problems with this evidence undercut ATF’s reliance on this data.

First, while there was an overall declining trend in the number of new applications over those years, the downward trend slowed significantly in the two years after the 2024 Rule went into effect.⁸² The Proposed Rule does not attempt to identify other possible causes of this downward trend, nor does it give any weight to the fact that the downward trend has slowed. Nor does ATF give any consideration to whether the data supports the obvious contrary conclusion: that more applications have been filed than otherwise would have been absent the 2024 Rule. And this dataset is incomplete in the first place; it does not identify applications from formerly unlicensed sellers, provides no NICS transaction data despite ATF’s separate assertion that background checks did not increase, and its total-licensee figures also reflect renewals and departures unrelated to the 2024 Rule.

Second, the Proposed Rule ignores a much more plausible, confounding explanation for the small (but slowing) decrease in the number of Type 01 dealer applications from 2024 to 2025: the 2024 Rule was not fully in effect for most of this time. The 2024 Rule took effect on May 20,

⁷⁸ See 27 C.F.R. § 478.13(h); 89 Fed. Reg. at 28,976 & n.65.

⁷⁹ Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,426.

⁸⁰ See 89 Fed. Reg. at 29,090–91, 28,971, 28,991; see, e.g., *United States v. Tyson*, 653 F.3d 192, 200–01 (3d Cir. 2011) (outlining six nonexclusive factors relevant to whether a person is engaged in the business of dealing firearms); *United States v. Bailey*, 123 F.3d 1381, 1392 (11th Cir. 1997) (“In determining whether one is engaged in the business of dealing in firearms, the finder of fact must examine the intent of the actor and all circumstances surrounding the acts alleged to constitute engaging in business.”) (quoting *United States v. Palmieri*, 21 F.3d 1265, 1268 (3d Cir.), *vacated on other grounds*, 513 U.S. 957 (1994)); see also *United States v. Shipley*, 546 Fed. App’x 450, 456 (5th Cir. 2013).

⁸¹ Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,429.

⁸² *Id.* at 24,429 (depicting a 4.4% drop in applications from 2024 to 2025, compared to larger drops in earlier years).

2024 but was enjoined by a federal district court on June 11, 2024 as to the States of Texas, Louisiana, Mississippi, and Utah, as well as several associations and their members.⁸³ In another lawsuit challenging the 2024 Rule brought by twenty states, the district court in July 2024 denied a motion for a TRO and preliminary injunction enjoining the rule.⁸⁴ But despite opposing that motion, the federal defendants in February 2025 *agreed* not to enforce the 2024 Rule as to the plaintiffs in exchange for their consent to stay the lawsuit.⁸⁵ The total effect is that the 2024 Rule was not enforced in close to half of the States for the vast majority of 2025.

ATF's own decision not to enforce the rule in many States almost certainly affected the effectiveness of the 2024 Rule. (Indeed, ATF suggests that the fact it "has not used the EIB rule's presumptions in civil proceedings[] show[s] they were in fact unnecessary in practice.")⁸⁶ Of the twenty-four States where the 2024 Rule was enjoined or not enforced, only one requires background checks for firearms purchases beyond what is required by federal law.⁸⁷ Similarly, only one of those States requires all dealers to obtain a state-issued license to sell firearms.⁸⁸ In short, these States generally do not regulate the sale and transfer of firearms beyond the requirements of federal law, such that rejecting the 2024 Rule as ineffective without acknowledging the role that the injunction and ATF's own non-enforcement of that very 2024 Rule played ignores an important part of the problem.

D. The Proposed Rule Fails to Consider Reasonable Alternatives.

While the flaws in the Proposed Rule's justifications alone reflect arbitrary decisionmaking, the Proposed Rule further fails to consider reasonable alternatives that could address its purported concerns, as the APA requires. Where there are "significant and viable and obvious alternatives" that address an agency's concerns while reducing the detrimental effects of a change in policy, agencies must give serious consideration to these alternatives and, at a minimum, explain why they were not adopted.⁸⁹ Instead, ATF considered only the *procedural* options available to it: taking no action; rulemaking to rescind the provisions entirely; and issuing guidance. But ATF did not consider available substantive alternatives.

Beginning with the "fact-pattern presumptions," the Proposed Rule admits "[t]he presumptions all involved fact patterns from which a fact finder could find that a person was

⁸³ *Texas v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 2:24-cv-89-Z, 2024 WL 2967340 (N.D. Tex. June 11, 2024).

⁸⁴ *Kansas v. Garland*, No. 24-cv-1086, 2024 WL 3360533 (D. Kan. July 10, 2024).

⁸⁵ Notice Regarding Defs.' Mot. to Stay, *Kansas*, No. 24-cv-1086, 2024 WL 3360533 (D. Kan. July 10, 2024) (ECF 225).

⁸⁶ Revising Regulations Defining "Engaged in the Business" as a Dealer in Firearms, 91 Fed. Reg. at 24,427.

⁸⁷ *Fact Sheet: Update Background Check Laws*, Everytown Rsch. & Pol'y (May 10, 2024), <https://everytownresearch.org/report/update-background-check-laws/>.

⁸⁸ *2026 Everytown Gun Law Rankings: Which States Require All Gun Dealers to Get a State-Issued License*, Everytown Rsch. & Pol'y (Jan. 14, 2026), <https://everytownresearch.org/rankings/law/dealer-license-required/>.

⁸⁹ *Dist. Hosp. Partners, L.P. v. Burwell*, 786 F.3d 46, 59 (D.C. Cir. 2015) (quoting *Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 215 (D.C. Cir. 2013)) (citation modified); see also *City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987) (agency must provide a "reasoned explanation" for rejecting "responsible alternatives").

engaged in the business.”⁹⁰ That is hardly surprising, since these presumptions were developed from ATF’s own long history of enforcement against unlicensed dealers and its review of the caselaw.⁹¹ Even now, ATF does not claim that any of the fact-pattern presumptions are not indicators that a person is engaged in the business of dealing firearms.⁹² There is nevertheless no indication that ATF considered alternatives to eliminating the presumptions entirely. ATF asserts a concern that, in enforcement actions, courts or authorities theoretically may misinterpret the 2024 Rule and shift to the defendant the burden of proof rather than merely the burden of producing evidence. Yet ATF failed to consider the option of simply revising the 2024 Rule to expressly clarify that the government bears the ultimate burden of persuasion. Nor did ATF consider the options of modifying the 2024 Rule’s fact-pattern presumptions to address the agency’s concerns, retaining the fact patterns in the regulation as nonbinding factors or permissive inferences, or refashioning the presumptions as formal guidance. These alternatives would reduce confusion among unlicensed dealers while addressing ATF’s stated concerns about theoretically shifting the burden of proof in an enforcement action.

The Proposed Rule also fails to consider whether revised definitions of “personal collection” and/or “former licensee inventory” could adequately resolve its stated concerns while still providing needed clarity.

Those options are within the ambit of the prior policy and still would have promoted clarity for the regulated community. That ATF failed to consider any of these policy alternatives further demonstrates that the agency failed to properly weigh the benefits and costs of its approach including possible alternatives, reflecting arbitrary decisionmaking.

III. The Proposed Rule is Contrary to Law.

Several aspects of the Proposed Rule are also contrary to federal statutes. In particular, the Proposed Rule rescinds paragraph (1) of the 2024 Rule’s definition of “personal collection (or personal collection of firearms, or personal firearms collection)”; and rescinds the 2024 Rule’s definition of “former licensee inventory” as well as corresponding language in 27 C.F.R. §§ 478.57 and 478.78.⁹³ Both changes rest on ATF’s erroneous legal conclusion that the rescinded provisions conflict with federal statutes, and thus these changes are “arbitrary, capricious, or otherwise not in accordance with law.”⁹⁴

First, the Proposed Rule rescinds paragraph (1) of the definition of “personal collection” based entirely on ATF’s mistaken view that this language is inconsistent with 18 U.S.C. § 921(a). It argues that this language references the definition of “collector” in § 921(a)(13) but “overreads

⁹⁰ Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,427.

⁹¹ Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. at 28,977–79, 28,977 nn. 72–84.

⁹² Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,427.

⁹³ *Id.* at 24,431–32.

⁹⁴ 5 U.S.C. § 706(2)(A); *see Arizona v. Thompson*, 281 F.3d 248, 253–54 (D.C. Cir. 2002) (holding that an agency action is “not in accordance with law” where it rests on agency’s erroneous view that its action is “compelled by statute”).

section 921(a)(13),” and further criticizes the 2024 Rule’s reliance on dictionary definitions of “collection.”⁹⁵ But this runs into multiple problems.

For one, paragraph 1 in the 2024 Rule’s definition of “personal collection” merely incorporates *two* words from section 921’s definition of “collector”—“curios” and “relics”—and its use of those words is consistent with section 921. In relevant part, paragraph 1 of the 2024 Rule defines “personal collection” to include “[p]ersonal firearms that a person accumulates for study, comparison, exhibition (e.g., *collecting curios or relics*, or collecting unique firearms to exhibit at gun club events), or for a hobby (e.g., noncommercial, recreational activities for personal enjoyment, such as hunting, skeet, target, or competition shooting, historical re-enactment, or noncommercial firearms safety instruction).”⁹⁶ The BCSA, meanwhile, does not define “personal collection,” but exempts 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 firearms.”⁹⁷

As the Proposed Rule acknowledges, that text sets up a basic distinction: a person is “engaged in the business” if they accumulate the firearms for “primarily commercial” uses, as opposed to “personal, noncommercial” uses.”⁹⁸ Put differently, as the Proposed Rule states, “the function of ‘personal collection’” in the BCSA is to exempt firearms a person had accumulated “for personal, noncommercial use.”⁹⁹ Plainly, “curios or relics” that a person accumulated “for study, comparison [or] exhibition” were obtained not “for profit,” but rather “for personal, noncommercial use”—and thus fit the statutory exception. Likewise, the Proposed Rule offers no reason why inclusion of the words “study,” “comparison,” “exhibition,” or “hobby” that appear in dictionary definitions of “collection” conflicts with the BCSA—indeed, “hobby” is right in the statute’s exception, which covers firearms obtained “for the enhancement of *a personal collection or for a hobby*.”¹⁰⁰

Further, even if there were some flaw with the 2024 Rule’s inclusion of “curios or relics,” that in no way justifies rescinding all of paragraph (1) of the “personal collection” definition. The Proposed Rule thus offers no explanation for removing the second sentence of paragraph (1); nor could it, as this tracks the statutory text “to predominantly earn a profit through the repetitive purchase and resale of firearms.”¹⁰¹ Similarly, because ATF’s concern is rooted in just a few words in the regulatory definition, it arbitrarily ignored the obvious alternative of simply striking the few offending words, as opposed to the entire definition—an independent reason this change violates the APA. That applies as well to the last sentence of paragraph (1) of the definition, which excludes “firearms accumulated primarily for personal protection” from the definition; again, ATF ignored the alternative of striking only this sentence, which would address its asserted concern that the

⁹⁵ Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,429–30 (“ATF now believes that the definitions identified by the EIB rule are too restrictive.”).

⁹⁶ 27 C.F.R. § 478.11 (emphasis added).

⁹⁷ 18 U.S.C. § 921(a)(21)(C) (emphasis added).

⁹⁸ Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,430.

⁹⁹ *Id.*

¹⁰⁰ 18 U.S.C. § 921(a)(21)(C) (emphasis added).

¹⁰¹ *Id.*

2024 Rule improperly failed to treat firearms obtained “primarily for personal protection” as part of a personal collection.¹⁰²

Second, the Proposed Rule rescinds the definition of “former licensee inventory” and corresponding provisions spelling out the obligations of licensees discontinuing business.¹⁰³ As noted, these provisions treat the firearms inventory of a licensee discontinuing business as having been “purchased repetitively” with “the predominant intent to earn a profit,” and thus requires the licensee to dispose of its inventory within 30 days, either by selling them to a licensed entity or a transfer to a “responsible person” of the former licensee not prohibited from receiving them.¹⁰⁴ Likewise, the former licensee at that point may not continue engaging in the business of dealing firearms.¹⁰⁵ The Proposed Rule declares that “the effectively permanent restraint on firearms sales after the 30-day period is arguably unlawful,” but it again sorely misreads the statute.¹⁰⁶ The rescinded provisions simply operationalize the BCSA’s rule: a firearms dealer whose license has been revoked or nonrenewed yet continues regularly selling firearms for profit is “engaged in the business” of firearms dealing—license or no license—and thus remains subject to recordkeeping and background check requirements. The Proposed Rule objects that this sweeps in a former licensee who sells an occasional firearm in a private sale years later, which purportedly would not be covered by the statutory definition.¹⁰⁷ But that is hardly so: the statutory exception applies only to 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 firearms,” and the hypothetical former licensee gradually unloading its inventory is not selling firearms as “a hobby” or to enhance “a personal collection.” The rescinded provisions simply recognize, consistent with the BCSA, that selling off the inventory even years later does not negate the fact that the firearms were originally “purchased with the predominant intent to earn a profit by repetitive purchase and resale.”¹⁰⁸

Moreover, even assuming that narrow application the Proposed Rule objects to conflicted with the BCSA, ATF offers no justification for jettisoning these provisions in their entirety. Indeed, ATF agrees that numerous applications “are clearly covered by statutory language,” such as former licensees who hold “fire sales” of their inventory without conducting background checks. But the rescinded provisions would no longer restrict those scenarios either, with no explanation why. The Proposed Rule thus again arbitrarily ignores the obvious alternatives to rescinding these provisions in whole, including the alternatives of simply extending the disposal period from 30 days to a longer duration or permitting some occasional and isolated sales outside the 30-day window. For that independent reason, the rescission of the “former licensee inventory” definition and corresponding provisions is arbitrary and capricious in violation of the APA.

* * *

¹⁰² Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,430.

¹⁰³ *Id.* at 24,430–32.

¹⁰⁴ 27 C.F.R. §§ 478.11, 478.57, 478.78(b)–(d).

¹⁰⁵ *Id.*

¹⁰⁶ Revising Regulations Defining “Engaged in the Business” as a Dealer in Firearms, 91 Fed. Reg. at 24,430.

¹⁰⁷ *Id.*

¹⁰⁸ 27 C.F.R. § 478.57(b)(2).

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The Proposed Rule is arbitrary and capricious and violates the BCSA. And its effects are just as concerning: it will make it easier for prohibited persons to obtain and traffic firearms, and will make it harder for state and local law enforcement to catch them. The States urge ATF to withdraw the Proposed Rule.

Sincerely,



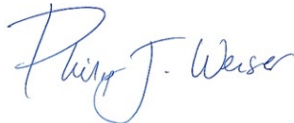
Jennifer Davenport
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Kristin K. Mayes
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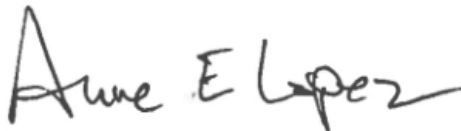
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August 4, 2026

Via Federal eRulemaking Portal and U.S. Mail

The Honorable Todd Blanche,
Acting Attorney General of the United States

Robert Cekada,
Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives

c/o: ATF Rulemaking Comments
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Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Attn: ATF 1140-AA73

Re: Clarifying Interstate Transportation of Firearms Under the Gun Control Act,
Docket No. ATF-2026-0133, ATF N. 2025R-18P, RIN 1140-AA73, 91 Fed. Reg. 24441
(May 6, 2026)

Dear Acting Attorney General Blanche and ATF Director Cekada,

The undersigned Attorneys General of New York, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and Washington (the "States") write in response to the Notice of Proposed Rulemaking issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") in the May 6, 2026 edition of the Federal Register, entitled "Clarifying Interstate Transportation of Firearms Under the Gun Control Act" (the "Proposed Rule"). While the States believe that portions of the Proposed Rule are appropriate and consistent with the governing statute, certain of its provisions are arbitrary, capricious, and contrary to law.

I. The Proposed Rule Would Muddy the Plain Language of 18 U.S.C. § 926A and Impede Law Enforcement

The States do not object to interpreting 18 U.S.C. § 926A as covering certain travel-related activities that extend beyond simply transiting between one point and another.¹ The States also do not object to ATF's view that the activities enumerated in Section 478.38(a) of the proposed rule, namely "staying in temporary lodging overnight, transiting between modes of transportation, stopping for food, fuel, vehicle maintenance, an emergency, picking up or discharging passengers, moving a firearm at the beginning of a journey from a fixed address to a vehicle for transportation or at the end of a journey from a vehicle to a fixed address," are scenarios to which Section 926A may reasonably apply, so long as the traveler "store[s] the unloaded firearm and ammunition in a locked container so that they are not readily accessible for immediate use," as the Proposed Rule contemplates.

Certain of the categories require additional clarifying language, however. The States do not object to ATF's view that Section 926A may properly apply to "stopping for . . . medical treatment," but suggest that ATF add language specifying that the exception applies "in the event of an injury or other condition arising out of the travel itself," in order to clarify that firearms may not be carried in foreign states simply because a purpose of travel is to obtain medical treatment, such as when traveling to see a specialist physician. The States also suggest that Section 926A's application to "picking up or discharging passengers" be modified so that it applies to "picking up a passenger who is being transported to the same location as the firearm" and "discharging a passenger who is being transported from the same initial location as the firearm." These limitations would prevent the rule from purporting to encompass long or unnecessary detours in contravention of the statute's language and purpose.

The States are also concerned by the inclusion of broad and overly vague language and urge ATF to remove the terms "reasonably necessary activities incidental to interstate travel" and "any other activity incidental to the original transportation" because these terms are unnecessary, ambiguous, and exceed the governing statute. ATF should delete these terms from the Proposed Rule but keep the accompanying enumerated list (as modified above), which covers virtually all foreseeable situations for the appropriate application of the statute and can be expanded in future rulemakings, if necessary.

The phrases "reasonably necessary activities incidental to interstate travel" and "any other activity incidental to the original transportation" stray far beyond the statutory text and create ambiguity where none previously existed.² The statute enacted by Congress contemplates the transport of firearms only when "transport[ing]" a firearm and "during such transportation." 18 U.S.C. § 926A. The right conferred under Section 926A is "qualified and narrow," and is "available if, and only if, the statutory prerequisites to its application are satisfied."³ It also lays

¹ See *Khoshnevis v. Property Clerk of NYPD*, 123 A.D.3d 929, 930 (N.Y. App. Div. 2014).

² See *United States v. Haggar Apparel Co.*, 526 U.S. 380, 393 (1999) (finding the term "incidental" to be ambiguous when not defined in statute); *Winn-Dixie Stores, Inc. v. Big Lots Stores, Inc.*, 886 F. Supp. 2d 1326, 1344 (S.D. Fla. 2012) ("the term 'incidental' is ambiguous on its face"), *aff'd in part, rev'd in part*, 746 F.3d 1008 (11th Cir. 2014); see also *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 24 (1993) (Scalia, J., concurring) ("I do not think clarity is at all increased by . . . appealing to a 'reasonable person's' notion of what the vague word means." (brackets omitted)).

³ *Torraco v. Pt. Auth of N.Y. & N.J.*, 615 F.3d 129, 141 (2d Cir. 2010) (Wesley, J., concurring).

out a standard that is relatively clear and administrable, providing straightforward guidance for both firearm owners and law enforcement.⁴

The inclusion of vague language such as “reasonably necessary” and “incidental to the original transportation” undermines that clarity and would make it difficult or impossible to evaluate what travel-related activities are covered. This is a particular challenge for law enforcement officers who must make decisions on the spot, with incomplete information and without access to the large bodies of case law necessary to interpret these ambiguous terms.⁵ The result would only deepen “the lack of clarity surrounding the interstate transportation of firearms” that the Proposed Rule decries.⁶ The undersigned States further note that this uncertainty and related legal gray areas may make it easier for gun traffickers to evade enforcement and prosecution. By adding ambiguity where none currently exists, ATF acts in excess of the agency’s authority to interpret the governing statute and generates an arbitrary and capricious result.

Section 478.38(a)’s final clause is also duplicative, as the Proposed Rule reads: “Protected transportation under this section includes reasonably necessary activities incidental to interstate travel, such as . . . any other activity incidental to the original transportation.” If “any other activity incidental to the original transportation” is coextensive with the phrase “reasonably necessary activities incidental to interstate travel,” then the clause is unnecessary surplusage and can be deleted. If, on the other hand, “any other activity incidental to the original transportation” is intended as an additional substantive category that covers travel-related activities that are not “reasonably necessary,” then the Proposed Rule strays far outside the statutory text.

In contrast, the enumerated list in the Proposed Rule covers virtually all foreseeable situations where § 926A could apply without creating any such ambiguity, and the language contemplating “an emergency” creates a useful but limited safety valve for unanticipated but appropriate situations. In the event that additional and appropriate travel-related situations for the § 926A exclusion become apparent, ATF can and should add them to the list in a future rulemaking.

II. The Proposed Rule’s Attempt to Legalize the Transport of Prohibited Accessories and Large-Capacity Magazines Is Arbitrary and Capricious, Contrary to Law, and Conflicts with Bedrock Principles of Federalism

The States urge ATF to rescind Section 478.38(b)(6) of the Proposed Rule, which purports to grant “the right to transport attachments, accessories, or other instruments for the firearms [persons] are transporting, including, but not limited to, ammunition (regardless of bullet type), scopes, sights, optics, stocks, grips, stabilizing braces, mounts, weapon-mounted lights, multifunction aiming lights, magazines, clips, feed strips, any other ammunition feeding device, holsters, slings, and firearm cleaning kits.” This provision appears intended to

⁴ See, e.g., Lewen v. Edinboro Univ. of Pa., C.A. No. 10-164, 2011 WL 4527348, at *5 (W.D. Pa. Sept. 28, 2011) (finding Section 926A “clearly inapplicable” where plaintiff’s firearm “was no longer in transit.”).

⁵ See Torraco v. Pt. Auth. of N.Y. & N.J., 539 F. Supp. 2d 632, 644-45 (E.D.N.Y. 2008) (noting that in many firearms arrests “suspects assert some claim of legal entitlement” and that it is inappropriate to interpret Section 926A to “require local police to have on-the-spot knowledge of the firearms laws of all 50 states”).

⁶ 91 Fed. Reg. 24,444.

undermine state laws that protect the public by prohibiting the sale or transport of large-capacity magazines,⁷ rapid-fire modification devices,⁸ and other particularly dangerous accessories, none of which are necessary for armed self-defense. Moreover, the proposed change appears to be motivated more by ideology⁹ than by any good-faith reading of the governing statute.

Start with the governing statutory text, which must be interpreted “based on the traditional tools of statutory construction, not individual policy preferences.”¹⁰ Section 926A specifies what items a person is “entitled to transport,” namely “a firearm” and “ammunition.”¹¹ Both are defined terms under the governing statute,¹² and neither defined term includes “attachments, accessories, or other instruments” as contemplated by the Proposed Rule.¹³ If such items were considered “firearm[s]” under the Gun Control Act, then a federal license would be required to sell or transport them, for instance,¹⁴ and a background check would be required in connection with any sale of such item.¹⁵

By purporting to expand federal preemption to allow the transportation of devices that fall outside the definitions of “firearm” or “ammunition,” the Proposed Rule tramples upon instructions from all three branches of government requiring ATF to prioritize federalism and minimize any infringement of the right of States to decide for themselves what dangerous firearm accessories they will permit.¹⁶ The statutory context “explicitly cautions against finding that Congress intended Section 926A to operate at the exclusion of state gun laws,” as Congress has directed that the federal statute must not be construed to preempt state law “unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.”¹⁷ ATF’s interpretation also violates the Supreme Court’s well-settled federalism canon of statutory interpretation, under which “[i]f Congress intends to alter the usual constitutional balance between the States and the Federal Government,” or to “pre-empt the historic powers of the States,” “it must make its intention to do so unmistakably clear in the language of the statute.”¹⁸ If Congress had intended Section 926A

⁷ See, e.g., N.Y. Penal Law § 265.37; Cal. Penal Code § 32310; 720 Ill. Comp. Stat. 5/24-1.10; Mass. Gen. Laws c. 140, §§ 121, 131M.

⁸ See, e.g., N.Y. Penal Law § 265.01-c; Cal. Penal Code § 32900; Mass. Gen. Laws c. 140, §§ 121, 131M, as amended by St. 2024, c. 135 (rapid-fire trigger activators); Md. Code. Ann. Crim. § 4-305.1.

⁹ See 91 Fed. Reg. at 24444 (claiming, without basis, to “protect travelers from state or local laws that infringe on their right to bear arms”).

¹⁰ Loper Bright Enterprises v. Raimondo, 602 U.S. 369, 403 (2024).

¹¹ 18 U.S.C. § 926A; see Rhode v. Becerra, 342 F. Supp. 3d 1010, 1017 (S.D. Cal. 2018) (§ 926A “entitles a person to transport into the state a firearm and ammunition”).

¹² 18 U.S.C. §§ 921(a)(3), (a)(17)(A).

¹³ See Bondi v. VanDerStok, 604 U.S. 458, 474 (2025) (“No one thinks [the definition] reaches every piece or part that can be used to produce a firearm.”).

¹⁴ 18 U.S.C. § 922(a)(1).

¹⁵ 18 U.S.C. § 922(t)(1).

¹⁶ See Carey v. Throwe, 957 F.3d 468, 482 (4th Cir. 2020) (“The regulation of firearms has been at the heart of the states’ police power since the founding.”); United States v. Cruikshank, 92 U.S. 542, 553 (1875).

¹⁷ Torraco v. Pt. Auth of N.Y. & N.J., 615 F.3d 129, 139 (2d Cir. 2010) (quoting 18 U.S.C. § 927); see also Second Amendment Arms v. City of Chicago, No. 10 Civ. 4257, 2012 WL 4464900, at *6-7 (N.D. Ill. Sept. 25, 2012) (“Nothing in § 926A suggests an intention by Congress to expressly preempt [state and local] laws”).

¹⁸ Gregory v. Ashcroft, 501 U.S. 452, 460-61 (1991) (citations and quotation marks omitted).

to preempt state regulation of the wide swathe of accessories and accoutrements in the Proposed Rule, it could have and would have said so.

The proposed preemption also violates Executive Branch guidelines for rulemaking, as ATF has failed to follow Executive Order 13132, which has been respected by administrations of both parties for over a quarter-century.¹⁹ Under that order, an agency like ATF may only construe a federal statute to preempt state law “where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of state law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.”²⁰ None of these situations is present here. The law also requires that “[a]ny regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute,”²¹ but here ATF has designed a maximalist, open-ended formula for preemption that extends not only to the extensive enumerated list of “attachments, accessories, or other instruments,”²² but also beyond, without any limiting principle. Although ATF cites an informal discussion with some state officials at an FBI Criminal Justice Information Services meeting and now invites comments on the Proposed Rule, neither that limited exchange nor ordinary notice-and-comment proceedings constitutes the formal, meaningful consultation with affected States that Executive Order 13132 contemplates “early in the process of developing the proposed regulation.”²³

Given that ATF has not previously interpreted Section 926A to include “attachments, accessories, or other instruments,” the Proposed Rule is inadequate in that it fails to provide the required “reasoned explanation for the change.”²⁴ A simple reference to “impracticalities that would apply to other accessories,”²⁵ falls far below the required standard.²⁶ Nor has ATF acknowledged the serious reliance interests of the States, which have calibrated their own firearms laws and enforcement practices to the settled, narrow scope of Section 926A.²⁷ The proposed preemption is also arbitrary and capricious in that ATF “entirely failed to consider an important aspect of the problem,”²⁸ namely whether the atextual expansion of Section 926A to cover “attachments, accessories, or other instruments” will incentivize illegal trafficking into states that prohibit items such as large-capacity magazines and forced reset triggers.

The governing statute does not permit ATF to exempt “attachments, accessories, or other instruments” from prohibitions on interstate transport in this way, nor does any other statutory

¹⁹ See 64 Fed. Reg. 43255 (Aug. 10, 1999).

²⁰ *Id.* § 4(a).

²¹ *Id.* § 4(c).

²² 91 Fed. Reg. 24,448.

²³ 64 Fed. Reg. 43255 § (6)(c)(1).

²⁴ *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

²⁵ 91 Fed. Reg. 24,445.

²⁶ See *Encino Motorcars, LLC*, 579 U.S. at 221-22 (“the agency must at least ‘display awareness that it is changing position’ and ‘show that there are good reasons for the new policy.’ In explaining its changed position, an agency must also be cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account.’” (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (citation omitted))).

²⁷ See *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (an agency changing position must take “serious reliance interests” into account).

²⁸ *Alzokari v. Pompeo*, 973 F.3d 65, 70 (2d Cir. 2020).

authority.²⁹ ATF should strike section 478.38(b)(6) of the proposed rule, together with the parallel reference to “accessories” in the second sentence of proposed section 478.38(a), rather than undermine bedrock principles of federalism, state sovereignty, and public safety. Striking subsection (b)(6) would work no hardship on lawful travelers: Section 926A itself secures the transport of “a firearm” and “ammunition,” the only items Congress chose to protect.

III. The Proposed Rule Does Not Calculate Its Costs

The States are concerned by ATF’s conclusion that the Proposed Rule “would not impose total costs greater than zero.”³⁰ This assertion is unaccompanied by any economic analysis and ignores the ways in which the Proposed Rule will add additional burdens to state and local law enforcement. ATF has also analyzed the Proposed Rule in isolation, even though the agency itself has presented it as one component of a coordinated package of regulatory proposals; a reasoned analysis must account for the cumulative burdens that these interlocking proposals will jointly impose on state and local enforcement. That failure is independently arbitrary: ATF asserts benefits for travelers yet assigns zero cost to the enforcement consequences described below, and considers none of the less-harmful alternatives discussed in Part IV, *infra*.³¹

Although the Proposed Rule would not authorize possession where any of the States are the origin or destination of the travel, or where the statutory conditions for protected transport are not satisfied, it will complicate real-time enforcement decisions and may create additional litigation risk in disputed cases. In particular, the proposed rule would likely require the dedication of additional roadside resources to investigative fact development whenever someone is encountered while transporting a firearm or other item covered by Section 478.38(b)(6), including assessment of the person’s claimed origin, destination, route, legality of possession in other jurisdictions, manner of storage, accessibility, and whether any interruption in travel falls within the Proposed Rule’s expanded definition of protected transportation.³² In close cases, officers may need to consult supervisors or prosecutors before taking (or not taking) enforcement action, which could increase the time and complexity of otherwise routine illegal weapons possession investigations. Law enforcement organizations will also need to update legal guidance, training materials, and field procedures to ensure that officers properly assess the

²⁹ Indeed, federal courts in firearm cases regularly distinguish between weapons themselves and the accessories that attach to or accompany them. See United States v. Berger, 715 F. Supp. 3d 676, 700 (E.D. Pa. 2024) (“courts are drawing a line for Second Amendment protection based on whether the particular firearm component is necessary or integral to a firearm’s operation.”); United States v. Cooperman, No. 22-CR-146, 2023 WL 4762710, at *1 (N.D. Ill. 2023) (“The plain text of the Second Amendment does not protect accessories that are not bearable arms”); United States v. Saleem, No. 23-4693, 2024 WL 5084523 (4th Cir. Dec. 12, 2024) (“While a silencer may be a firearm accessory, it is not a ‘bearable arm’”); Ocean State Tactical, LLC v. Rhode Island, 646 F. Supp. 3d 368, 386-87 (D.R.I. 2022) (“In this Court’s view, L[arge] C[apacity] M[agazines], like other accessories to weapons, are not used in a way that casts or strikes at another.”), *aff’d on other grounds*, 95 F.4th 38 (1st Cir. 2024) (quotation marks and citations omitted).

³⁰ 91 Fed. Reg. at 24,446.

³¹ See Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 46-51 (1983) (agency must consider obvious alternatives and may not ignore an important aspect of the problem); Exec. Order No. 12,866 § 1(b)(6), 58 Fed. Reg. 51,735, 51,736 (Oct. 4, 1993) (agencies must assess both costs and benefits of intended regulation).

³² See Torraco, 615 F.3d at 138 (enumerating the “difficulties, faced by judiciary and law enforcement officers, inherent in [Section 926A’s] application,” particularly “how a police officer encountering an unlicensed person with a firearm is to ascertain that [] the statute is met.”).

federal interstate transport safe harbor before taking enforcement action. The burden is compounded by the statute's structure: the facts that determine whether Section 926A applies, including origin, destination, lawful possession at each end, and manner of storage, lie almost entirely within the traveler's own knowledge, so each new catch-all category becomes another claimed defense that officers must attempt to evaluate or disprove at the roadside.³³

By expanding the ability of firearms traffickers to claim safe harbor from state and local laws, the Proposed Rule may also make it more difficult as a practical matter to interdict firearms, ammunition, feeding devices, or accessories discovered in the States when the possessor claims protected interstate transit. This difficulty would lead to significant additional costs to the States and their citizens if these articles reach the criminal market and are subsequently used in crimes of violence. These concerns are concrete: ATF's own trace data show that roughly 80% of the crime guns recovered in New York and traced to an identified purchaser between 2017 and 2021 (22,841 of 28,645) were first purchased out of state.³⁴

IV. The Proposed Rule Fails to Consider Obvious, Less-Harmful Alternatives

The States raise the following alternatives not as substitutes for the revisions requested above, but because the APA obligated ATF to consider them and the Proposed Rule considers none.³⁵ At a minimum, ATF should have evaluated: (1) codifying the enumerated list of travel-related activities without the catch-all phrases; (2) omitting subsection (b)(6) and subsection(a)'s reference to "accessories" in favor of the statutory terms "firearm" and "ammunition"; (3) an express savings clause confirming that nothing in the rule displaces state laws governing items that are neither "firearms" nor "ammunition"; and (4) a delayed or phased effective date permitting ATF and the States to assess enforcement effects before any nationwide expansion of the safe harbor. Each alternative would achieve the Proposed Rule's stated goal of clarifying Section 926A with far less damage to state enforcement systems, and ATF's failure to consider any of them independently renders the Proposed Rule arbitrary in its current form.

V. ATF Must Minimize any Interference with State and Local Regulation in Order to Comply with America's History and Tradition of Firearm Regulation

Lastly, the States respectfully disagree with ATF's suggestion that governing interpretations of Section 926A "may not comport with the Supreme Court's precedent on the Second Amendment." To the contrary, Section 926A is fully consistent with "the principles that underpin our regulatory tradition,"³⁶ which recognize the ability of travelers to transport firearms while actively in transit, but not in "the everyday movement through public spaces like town

³³ See *id.*; *Torraco*, 539 F. Supp. 2d at 644-45.

³⁴ ATF, National Firearms Commerce and Trafficking Assessment (NFCTA): Crime Guns – Volume Two: New York, <https://www.atf.gov/media/14251/download>. Other signatory States also face significant proportions of trafficked guns. See, e.g., <https://www.atf.gov/media/14451/download> (67% in Massachusetts); <https://www.atf.gov/media/14456/download> (53% in Maryland); <https://www.atf.gov/media/14491/download> (51% in Illinois).

³⁵ See *State Farm*, 463 U.S. at 46-51 (rulemaking arbitrary where agency failed to consider an obvious alternative within the ambit of the existing rule).

³⁶ *United States v. Rahimi*, 602 U.S. 680, 692 (2024).

squares and commercial districts, or the kind of travel associated with modern public transportation.”³⁷

This tradition was an understood part of the “pre-existing right” inherited from England, appearing first in Edward III’s “Proclamation for keeping the peace within the City” of London, which established that “no alien shall go in armour, or shall carry sword, knife with point, or other arms, in the City, or in the suburb thereof; on pain of imprisonment,” and instructed “every hosteler and herbergeour, within the franchise of the City, [to] cause his guests to be warned that they must leave their arms and armour in their hostels where they are lodging, in the keeping there of their hosts.”³⁸ The tradition was carried over into the common law and across the Atlantic, where American jurisdictions passed firearms laws with exceptions for travelers, but strictly limited the scope of such exceptions to prohibit armed carriage during stops or layovers.³⁹

Case law from the Fourteenth Amendment Era likewise reflects that these traveler exceptions were strictly limited to persons actually in transit.⁴⁰ And today’s federal courts have accordingly continued to reject any contention that the right to carry a weapon in one’s home state also allows the unlicensed carrying of firearms elsewhere.⁴¹

³⁷ *Kipke v. Moore*, 165 F.4th 194, 211 (4th Cir. 2026) (quotation omitted).

³⁸ 27 Edw. 3 (1353); available at <https://firearmslaw.duke.edu/laws/proclamation-for-keeping-the-peace-within-the-city-27-edw-3-1353>.

³⁹ See, e.g., II George W. Paschal, *A Digest of the Laws of Texas* 1322 (3d Ed. 1873), available at <https://babel.hathitrust.org/cgi/pt?id=hvd.hl3e66&seq=298> (permitting “persons traveling in the state” only to “keep[] or carry[] arms with their baggage”); 1889 AZ. Acts 31 (“Persons traveling may be permitted to carry arms within settlements or towns of the Territory for one-half hour after arriving in such settlements or town, and while going out of such towns or settlements,” but were otherwise required to “divest themselves of their weapons.”); 1887 N.M. Acts 57 (“Persons traveling may carry arms for their own protection while actually prosecuting their journey and may pass through settlements on their road without disarming; but if such travelers shall stop at any settlement for a longer time than fifteen minutes they shall remove all arms from their person or persons, and not resume the same until upon eve of departure.”); *Los Angeles News* (July 22, 1865) at 1 (reprinting city ordinance prohibiting weapons except for “persons actually traveling and immediately passing through Los Angeles City” and ordering police officers to arrest violators unless they “deposit[] their weapons in a place of safety”).

⁴⁰ See *Carr v. State*, 34 Ark. 448, 449 (1879) (“The exception in the statute is to enable travelers to protect themselves on the highways, or in transit through populous places—not to allow them the privilege of mixing with the people in ordinary intercourse, about the streets, armed in a manner which, upon a sudden fit of passion, might endanger the lives of others.”); *Eslava v. State*, 49 Ala. 355 (1873) (“the ‘travelling or setting out on a journey,’ which under the statute excuses the act, must be a travel to a distance from home, and not within the ordinary line of the person’s duties, habits, or pleasure.”); *Smith v. State*, 50 Tenn. 511, 513-14 (1871) (holding that travel exception was designed to protect against “such possible perils of the highways as are not supposed to exist among one’s own neighbors,” but that the law prohibited the “carrying of deadly weapons on the streets, in society, in the community, or among the people with whom we are in the habit of associating.”).

⁴¹ See *Meissner v. City of New York*, No. 23 Civ. 1907, 2025 WL 712744, at *5 (S.D.N.Y. Mar. 5, 2025) (rejecting as “meritless” a contention that “individuals have a right to drive through New York City with firearms, even if they do not have a New York State license”); *Commonwealth v. Harris*, 481 Mass. 767, 776 (2019) (under Full Faith and Credit Clause, “[t]he Commonwealth is not required to substitute its statutes for those of New Hampshire.”); see also *Hamilton v. Pallozzi*, 848 F.3d 614, 628 & n.15 (4th Cir. 2017) (“Virginia may have opted to restore [felon]’s gun ownership rights within its borders, but Maryland need not do so within its own borders.”); *Higbie v. James*, 795 F. Supp. 3d 307, 343-44 (N.D.N.Y. 2025) (other states “are not empowered to determine who may carry deadly weapons within New York’s borders any more than New York could grant or forbid the right to carry weapons there”).

Section 926A thus strikes the same balance reflected in “this Nation's historical tradition of firearm regulation,”⁴² allowing interstate transit with firearms only when actively traveling,⁴³ but not permitting weapons to be carried during stops or layovers unless permitted by state and local law. The Final Rule should be appropriately tailored both to the statutory text and to this enduring national tradition.

* * *

For the foregoing reasons, the States urge ATF to revise its text to curtail the present ambiguities and to respect bedrock principles of federalism, state sovereignty, and public safety.

Sincerely,



Letitia James
Attorney General of New York



Rob Bonta
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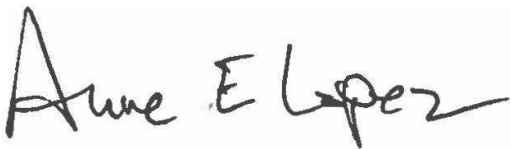
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⁴² NYSRPA v. Bruen, 597 U.S. 1, 17 (2022).

⁴³ See 18 U.S.C. § 926A (statute applies only “during such transportation”).



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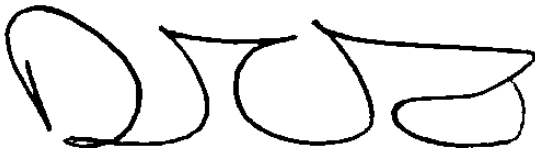
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August 4, 2026

Via Federal eRulemaking Portal and U.S. Mail

The Honorable Todd Blanche,
Acting Attorney General of the United States

Robert Cekada,
Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

c/o: ATF Rulemaking Comments
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Attn: DOJ ATF RIN 1140-AA93; DOJ ATF RIN 1140-AA96

Re: Multistate Comment Letter on Recently Proposed Changes to Regulations Related to the Federal Statutory Prohibition on Importation of Firearms

Dear Acting Attorney General Todd Blanche and ATF Director Robert Cekada,

The undersigned Attorneys General of the States of New York, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington (the "States") submit this comment letter in response to the Notices of Proposed Rulemaking by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice ("ATF") in the May 8, 2026 edition of the Federal Register. This letter addresses proposed rules related to the importation of firearms, entitled:

- Importing Dual-Use Frames, Receivers, or Barrels (RIN 1140-AA96), 91 Fed. Reg. 25192 (May 8, 2026); and

- Firearms Activities in Foreign Trade Zones, Customs-Bonded Warehouses (RIN 1140-AA93), 91 Fed. Reg. 25237 (May 8, 2026).

Federal law prohibits importing firearms unless they fall into certain narrow statutory exceptions.¹ This prohibition was enacted initially as a part of the 1968 Gun Control Act (the “GCA”).² The National Firearms Act (the “NFA”) separately prohibits importing NFA-defined firearms, subject to similar exceptions.

ATF has published two NPRMs that will broaden these exceptions beyond what Congress intended. *First*, ATF proposes authorizing the importation of frames, receivers, and barrels of non-sporting weapons if they could, in theory, be used in a sporting weapon (the “Dual-Use NPRM”).³ And *second*, ATF proposes to allow the importation of firearms for any reason into both customs-bonded warehouses and foreign trade zones (the “CBW FTZ NPRM”).⁴ Both proposals are contrary to law, for the reasons described below. And both proposals are arbitrary and capricious, as they represent a change in agency position without reasoned analysis and because ATF has failed to consider an important aspect of the problem, namely the massive public safety implications that flow from both of these proposals.

ATF seeks to promulgate these rules separately and presents them as “clarify[ing]” federal law or “[r]esolving regulatory ambiguity.”⁵ But taken together, they represent a major departure from past agency practice—one that is at odds with the federal laws governing importation of firearms and that will create grave new risks to public safety. If promulgated as written, these rules will allow unscrupulous companies to profit from importing military-grade weaponry. The States urge ATF to withdraw the Dual-Use NPRM and the CBW FTZ NPRM.

I. Background

Federal law prohibits, with certain exceptions, the importing of any firearm, including the frame, receiver, or barrel of a firearm.⁶ The law includes exceptions for imports for research, competition,

¹ 18 U.S.C. § 922(I).

² Pub. L. No. 90-618, 82 Stat. 1213 (1968).

³ Importing Dual Use-Frames, Receivers, or Barrels, 91 Fed. Reg. 25,192 (May 8, 2026), <https://www.federalregister.gov/documents/2026/05/08/2026-09163/importing-dual-use-frames-receivers-or-barrels>.

⁴ Firearm Activities in Foreign Trade Zones, Customs-Bonded Warehouses, 91 Fed. Reg. 25,237 (May 8, 2026), <https://www.federalregister.gov/documents/2026/05/08/2026-09162/firearm-activities-in-foreign-trade-zones-customs-bonded-warehouses>.

⁵ ATF, New Era of Reform: Clarify, <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform/clarify> (last accessed June 23, 2026).

⁶ 18 U.S.C. § 922(I) (GCA prohibition); 18 U.S.C. § 925(d) (exceptions); 26 U.S.C. § 5844 (NFA prohibition).

and training.⁷ It also allows imports of firearms that are “particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms” so long as they are not NFA-covered firearms.⁸ As the agency previously explained, “it is generally unlawful under the GCA to import firearms that are not recognized as suitable for sporting purposes or that are ‘firearms’ as defined under the NFA.”⁹ The statute goes on to provide that the sporting purposes exception does not apply to the importation of a frame, receiver, or barrel of a firearm “where the Attorney General has not authorized the importation of [such] firearm.”¹⁰ Additionally, most firearms and firearms parts are “defense articles,” subject to the Arms Export Control Act (the “AECA”), which imposes separate registration and licensure requirements.¹¹

As an additional exception to the general prohibition on importation, ATF has previously allowed bringing firearms into a foreign-trade zone (“FTZ”) for very limited purposes. Specifically, ATF has defined “importation” as “[t]he bringing of a firearm or ammunition into the United States; except that the bringing of a firearm or ammunition from outside the United States into a foreign-trade zone for storage pending shipment to a foreign country or subsequent importation into this country, pursuant to this part, shall not be deemed importation.”¹² A foreign-trade zone is an area (designated by the Foreign Trade Zone Board) that is in or adjacent to a port of entry of the United States, where goods are exempt from U.S. customs laws.¹³ Though FTZs are considered “outside the customs territory of the United States,”¹⁴ the GCA, NFA, and AECA all apply in FTZs.¹⁵

As for customs-bonded warehouses (“CBW”), the agency has previously taken the position that only items that are “importable under the GCA and NFA by meeting an exception” under either law may be brought into a CBW.¹⁶ CBWs are “buildings or parts of buildings and other enclosures” that have been “designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise.”¹⁷ Unlike FTZs, they are (for customs purposes) inside the United

⁷ 18 U.S.C. § 925(d)(1).

⁸ 18 U.S.C. § 925(d)(3).

⁹ ATF, Open Letter to All Federal Firearms Licensees: Allowable Activities for Firearms Brought into Customs Bonded Warehouses and Foreign Trade Zones (Oct. 31, 2024), <https://www.atf.gov/media/16846/download> (hereinafter “2024 CBW Open Letter”).

¹⁰ 18 U.S.C. § 925(d)(3).

¹¹ 2024 CBW Open Letter.

¹² 27 C.F.R. 478.11; *see also* 27 C.F.R. 479.11 (similar definition of “importation” for NFA firearms).

¹³ 19 U.S.C. §§ 81b, 81c.

¹⁴ 15 C.F.R. 400.1(c).

¹⁵ 2024 CBW Open Letter.

¹⁶ *Id.*

¹⁷ 19 U.S.C. § 1555(a).

States.¹⁸ Also unlike FTZs, the ATF's current regulations do not permit an exemption to allow importation of certain firearms into CBWs.

The existing rules reflect urgent policy considerations and decades of consistent interpretation. Congress enacted the GCA in part to address a “flood” of imported “surplus military weapons and low-priced foreign-made firearms,” which caused “major law enforcement problems” throughout the 1960s.¹⁹ The general prohibition on imports stopped the inflow of cheap firearms and has had lasting effects. Today, 18 U.S.C. § 922(l) and § 925(d)(3) together prevent criminals from accessing functionally equivalent weapons by buying them piecemeal. ATF has sensibly interpreted this statutory language to “permit[] no exceptions” for decades.²⁰

Loosening these restrictions—as ATF now proposes to do—threatens these policy achievements. ATF suggests, for example, that the Dual-Use NPRM could allow imported “AK receivers.”²¹ AK (“Avtomat Kalashnikova”) receivers are key components of AK-47-style rifles, which are cheap, durable assault rifles used in conflicts around the world (they were a service weapon of the Soviet Army for decades). For good reason, they are illegal in many States.²² Importing them will undermine those States’ laws and imperil public safety. Additionally, cheap firearms parts will likely do more than just facilitate circumvention of 18 U.S.C. § 922(l) and § 925(d)(3)’s import restrictions. Increasing the number of imported barrels threatens to aggravate the ongoing proliferation of ghost guns, which combine unmarked frames and receivers with commercially available parts.

In implementing 18 U.S.C. § 922(l) and § 925(d)(3), ATF has consistently counted firearms in CBWs as imported and limited the FTZ exception to firearms held “for storage.” Less than three weeks after Congress enacted the GCA in 1968, ATF proposed its first set of implementing regulations, including the predecessor to 27 C.F.R. 478.11. Those proposed regulations defined

¹⁸ Compare 19 U.S.C. § 81c(a) with 19 U.S.C. § 1555.

¹⁹ H.R. Rep. No. 90-1577, at 9 (1968); see also, e.g., President’s Comm’n on the Assassination of President Kennedy, *Report of the President's Commission on the Assassination of President Kennedy* 118-19 (1964) (describing purchase of \$21 imported surplus rifle used in Kennedy assassination), <https://www.govinfo.gov/content/pkg/GPO-WARRENCOMMISSIONREPORT/pdf/GPO-WARRENCOMMISSIONREPORT.pdf>.

²⁰ U.S. Dep’t of Just., Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Open Letter to Federally Licensed Firearms Importers and Registered Importers of U.S. Munitions Import List Articles* (Nov. 22, 2005), <https://www.atf.gov/media/18291/download>.

²¹ 91 Fed. Reg. at 25,193.

²² See, e.g., N.Y. Penal Law §§ 265.01-b, 265.00(3)(e), 265.00(22)(a); 720 ILCS 5(i)/24-1.9(a)(1)(J)(i); Cal. Penal Code §§ 30510, 30605(a)-(b); Mass. Gen. Laws ch. 140, §§ 121, 131M; Conn. Gen. Stat. § 53-202a;

“importation” in exactly the same language that 27 C.F.R. 478.11 uses today.²³ ATF finalized that language after notice and comment and it has remained unchanged ever since.²⁴ Just over two years later, ATF promulgated the predecessor to 27 C.F.R. 479.11, and its operative provisions have similarly remained unchanged.²⁵ Under regulations promulgated contemporaneously with the GCA, the FTZ exception has always applied only to firearms kept “for storage,” and CBWs have never been excluded from the definition of “importation.” ATF most recently reaffirmed this position in 2024.²⁶

Other federal regulations indicate that this limit on FTZ use (to keeping items “for storage”) is far from unique to firearms. Among others, the same restriction appears in regulations that govern wine,²⁷ distilled spirits,²⁸ specially denatured spirits,²⁹ and beer.³⁰ Unlike the identical language in 27 C.F.R. 478.11 and 479.11, ATF has never indicated any “ambiguity in these definitions as to what is and is not permitted.”³¹

II. The Dual-Use NPRM Is Contrary to Law

The Dual-Use NPRM cannot be reconciled with the plain text of the statutes that govern importation of firearms and firearm parts.

First, the NPRM would authorize the importation of materials that “had been previously configured on non-sporting firearms, military surplus, or firearms regulated under 27 CFR part 479.”³² This contradicts the plain text of 18 U.S.C. § 925(d)(3). That section authorizes an exemption for weapons “generally recognized as particularly suitable for or readily adaptable to sporting purposes,” but then excludes from that exemption any “surplus military firearms.” It also excludes from the exemption any firearm that “fall[s] within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1986,” which is another way of saying NFA firearms.

²³ *Compare* Commerce in Firearms and Ammunition, 33 Fed. Reg. 16,285, at 16,287 (Nov. 6, 1968), *with* 27 C.F.R. § 478.11.

²⁴ *See* Commerce in Firearms and Ammunition, 33 Fed. Reg. 18,555, at 18,558 (Dec. 14, 1968).

²⁵ *Compare* Machine Guns, Destructive Devices, and Certain Other Firearms, 36 Fed. Reg. 14,255, at 14,257 (Aug. 3, 1971), *with* 27 C.F.R. § 479.11.

²⁶ *See* 2024 CBW Open Letter at 2 (“[T]here are no federal laws or regulations that exempt or suspend application of [the GCA, NFA, or AECA] and [their] regulations in CBWs.”).

²⁷ 27 C.F.R. §§ 28.121(c), 28.211(c).

²⁸ *Id.* §§ 28.91(a)(3), 28.171(c).

²⁹ *Id.* § 28.151(b).

³⁰ *Id.* at §§ 28.141(a)(3), 28.144(b)(2), 28.221(c).

³¹ 91 Fed. Reg. at 25,239.

³² 91 Fed. Reg. at 25,199.

Second, the NPRM purports to authorize the importation of parts of firearms that, if brought in fully assembled, would violate federal importation laws. This, too, contradicts 18 U.S.C. § 925(d)(3), which provides that “where the Attorney General has not authorized the importation of the firearm . . . it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled.” In other words, the agency may not allow importation of a component part, where it has not already authorized the importation of the type of firearm from which that part came. But this is precisely what the NPRM would allow—because it would now allow importation of a frame, receiver, or barrel, even if it came from a non-sporting configured firearm that cannot be imported. The NPRM contends that this is simply a reflection of changing gun technology: “Many parts, including frames, receivers, or barrels, are modular. This modularity allows the same frame, receiver, or barrel to be used in both sporting and non-sporting firearm configurations.”³³ That may well be, but Congress has spoken. If a firearm part comes from a firearm which is not authorized to be imported, the agency’s hands are bound.

Third, the NPRM would allow people, including FFLs, to use imported parts from a non-sporting rifle to assemble a non-sporting firearm or NFA firearm, in direct contravention of 18 U.S.C. § 922(r). The NPRM would add a new paragraph that permits “[a] frame, receiver, or barrel that is imported because there is an identified firearm sporting configuration at the time of importation” to be “used to assemble a . . . non-sporting” firearm or NFA-defined firearm.³⁴ Here, the regulation authorizes assembly of a weapon prohibited for importation (a “non-sporting firearm”) even though 18 U.S.C. § 922(r) prohibits precisely that: “It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes.” To be sure, the NPRM does include a savings clause (“provided assembling such firearm complies with 18 U.S.C. 922(r), and the NFA”).³⁵ But the savings clause cannot be reconciled with the clear language of the proposed rule, which purports to authorize violations of 18 U.S.C. § 922(r), and it cannot save this NPRM from itself.³⁶ The same defect extends to the NFA: Congress permitted importation of NFA-defined firearms only for narrow governmental, scientific, research, and industry-sample purposes, 26 U.S.C. § 5844, and a rule that contemplates the assembly of new NFA firearms from imported

³³ 91 Fed. Reg. at 25,193.

³⁴ 91 Fed. Reg. at 25,199.

³⁵ 91 Fed. Reg. at 25,193.

³⁶ See *Fed. Trade Comm’n v. Credit Bureau Ctr., LLC*, 937 F.3d 764, 775 (7th Cir. 2019) (citation omitted) (“The Supreme Court has long instructed that acts ‘cannot be held to destroy [themselves]’ through saving clauses.”); *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1239 (9th Cir. 2018) (Savings clauses “are read in their context,” and “cannot be given effect when the Court, by rescuing the constitutionality of a measure, would override clear and specific language”); *Shomberg v. United States*, 348 U.S. 540, 547–48, (1955) (declining to “nullify” “clear legislative purpose” based on savings clause).

dual-use parts cannot be squared with that prohibition or with the NFA's separate making and registration requirements. 26 U.S.C. §§ 5821, 5822.

III. The Dual-Use NPRM Is Arbitrary and Capricious

The Dual-Use NPRM is arbitrary and capricious because it “fail[s] to consider an important aspect of the problem” and because it “is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”³⁷ Additionally, the NPRM would create confusion and needlessly muddy the waters.

The NPRM fails to consider an important aspect of the problem, by not considering any public safety effects that will flow from adopting a rule that allows the importation of military surplus parts and similarly dangerous firearm parts. ATF's failure to consider how flooding the U.S. market with cheap parts taken from military surplus and other non-sporting weapons is particularly galling when contrasted with the history underlying Congress' adoption of the initial ban on importing non-sporting weaponry. *See supra* page 4. Even more galling is ATF's complete failure to recognize that the firearm parts in question are in high demand among criminal networks for use in assembling dangerous and untraceable ghost gun assault weapons. ATF's own data confirm the danger: privately made “ghost guns” submitted to ATF for tracing rose from 1,629 in 2017 to 19,273 in 2021—an increase of more than 1,000 percent.³⁸

Similarly, the NPRM—issued *after* the agency's June 23, 2025 letter ruling (ATF Ruling 2025-1), allowing the importation of non-sporting barrels so long as someone can conjure a sporting use for that barrel—gives no real consideration of a full range of alternatives that the agency might adopt. For instance, the only alternatives that the agency considered in any detail were: (1) maintaining the status quo, post-June 2025 letter ruling (i.e. allowing importation of non-sporting barrels); (2) issuing guidance to allow importation of dual-use frames or receivers; and (3) promulgating the Dual-Use NPRM.³⁹ Missing from this list is a key, obvious alternative: rescinding the June 2025 letter ruling, and returning to the prior status quo, in which dual-use frames, receivers, and barrels cannot be imported. Other alternatives that the agency could have considered included gathering information and publishing a study about how expanding imports to allow dual-use frames, receivers, and barrels to be imported into the United States will impact public safety. The failure to take this step is particularly concerning, given the very apparent lack of information about this and other likely costs that will stem from the NPRM, if it is issued as a final rule.

³⁷ *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

³⁸ ATF, National Firearms Commerce and Trafficking Assessment (NFCTA): Crime Guns, Volume Two, Part III, at 5 (2023), <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us/download>.

³⁹ 91 Fed. Reg. at 25,195.

To that end, the NPRM asserts—without support—that the NPRM will “impose no costs.”⁴⁰ Taking just one of the platforms of firearm parts that are now available: the suggestion that opening up U.S. borders to a torrent of imported AK-47 frames, receivers, and barrels “will impose no costs” ignores the ways in which gun parts are used to build untraceable ghost guns and the particular lure that AK-47s have to would-be mass shooters.⁴¹ Additionally, States such as California, Arizona, and New Mexico are particularly concerned about how this rule could fuel drug cartel-related violence at or near the Southern border of the United States, with a significant loss of life and drain on law enforcement resources. Moreover, the economic costs to city and state governments from even one shooting involving military grade weaponry are staggering.⁴² The “no costs” assertion also contradicts the NPRM itself, which concedes both that ATF “does not have sufficient information to calculate quantifiable savings” and that an “unknown subset of domestic manufacturers may be adversely affected with increased competition.”⁴³

Separately, the NPRM is arbitrary and capricious because its proffered purpose (“clarification”) is at odds with the NPRM’s shifting and circular explanations. The NPRM clarifies nothing and instead leaves would-be importers and gun owners with unanswered questions: how could someone import a frame from a non-sporting weapon and use it to assemble a non-sporting weapon (which the NPRM would permit) without violating 18 U.S.C. 922(r)? How implausible does a “sporting configuration” need to be before ATF will determine that there is no world in which a firearm part is dual-use? What standard will ATF use to evaluate the justifications proffered by importers? We do not know the answers to these questions, because the NPRM does not say.

Finally, the NPRM is arbitrary and capricious because it demonstrates “naiveté from which ordinary citizens are free.”⁴⁴ The NPRM creates an incentive to invent “sporting configurations,” no matter how outlandish and divorced from what the firearm parts have been used to do (prior to importation). The NPRM’s suggestion that 18 U.S.C. § 922(r) permits assembly of imported non-sporting parts into a non-sporting firearm is an invitation to violate that statute. The consequences will be the proliferation of dangerous, military grade weaponry on American streets.

IV. The CBW FTZ NPRM Is Contrary to Law

The CBW FTZ NPRM makes two changes to the ATF’s regulations; both are contrary to the federal law.

⁴⁰ 91 Fed. Reg. at 25,195.

⁴¹ See, e.g., C.J. Chivers, *Tools of Modern Terror*, N.Y. TIMES (<https://www.nytimes.com/interactive/2016/world/ak-47-mass-shootings.html>).

⁴² *Report: The Economic Cost of Gun Violence*, Everytown for Gun Safety Support Fund (July 19, 2022), <https://everytownresearch.org/report/the-economic-cost-of-gun-violence/>.

⁴³ 91 Fed. Reg. at 25,195.

⁴⁴ *Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019) (citation omitted).

First, the CBW FTZ NPRM proposes allowing bringing firearms into CBWs on the same terms as the regulations allow bringing firearms into FTZs.⁴⁵ This rule is contrary to law, because it overlooks crucial distinctions between CBWs and FTZs, as well as the underlying reason why bringing firearms into FTZs is not considered “importation.” FTZs must be in or adjacent to ports of entry into the United States,⁴⁶ and products held in FTZs are not “subject to the customs laws of the United States.”⁴⁷ Indeed, once a product is taken from U.S. territory into an FTZ, it is deemed to have been *exported* for customs purposes.⁴⁸ Contrast that with the law governing CBWs, which provides that “bonded warehouses shall be used solely for the storage of *imported* merchandise, . . . or for the repacking, sorting, or cleaning of *imported* merchandise.”⁴⁹ In other words, when an item is in a CBW, it has already been imported for customs purposes, which means that the prohibition on importation applies, subject *only* to the limited exceptions found in 18 U.S.C. § 925(d). ATF cannot wave a wand and declare otherwise through this regulation.

The second proposed change fares no better. The current text of 27 C.F.R. § 479.11 specifies that importation is “[t]he bringing of a firearm within the limits of the United States or any territory under its control or jurisdiction, from a place outside thereof . . . with intent to unlade” and then exempts from that definition bringing a gun “into a foreign trade zone for storage pending shipment to a foreign country.” Similarly, 27 C.F.R. § 478.11 defines importation as “[t]he bringing of a firearm or ammunition into the United States” and then exempts “the bringing of a firearm or ammunition from outside the United States into a foreign-trade zone for storage pending shipment to a foreign country or subsequent importation into this country, pursuant to this part, shall not be deemed importation.” The proposed regulation would exempt from the definition of “importation” *any* activity—not just storage—in both FTZs and CBWs. Though the NPRM casts its changes as “faithfully align[ing] with the” text of “18 U.S.C. 925(d)(3),”⁵⁰ the proposed rule would stretch a minor exception⁵¹ into a massive loophole that effectively guts the prohibition on importation found in 18 U.S.C. § 922(l) and that is completely untethered from the narrow language of 18 U.S.C. § 925(d). To be sure: the CBW and FTZ statutes contemplate, in abstract, that those spaces could be used for non-storage tasks. But the question is whether doing so is importation under the GCA and NFA. And while those statutes do not expressly define “import,” they do define importer. Under the GCA, “[t]he term ‘importer’ means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of

⁴⁵ 91 Fed. Reg. at 25,238.

⁴⁶ 19 U.S.C. § 81b(a).

⁴⁷ 19 U.S.C. § 81c(a).

⁴⁸ *Id.*

⁴⁹ 19 U.S.C. § 1555(a) (emphasis added).

⁵⁰ 91 Fed. Reg. at 25,239.

⁵¹ The States take no position, in this comment, about the lawfulness of the storage in FTZ exception in current GCA regulations, except to note the GCA’s prohibition of importation “for purposes of sale or distribution.” 18 U.S.C. § 921(a)(9).

sale or distribution.”⁵² And under the NFA, “[t]he term ‘importer’ means any person who is engaged in the business of importing or bringing firearms into the United States.”⁵³ Both statutes rely upon a definition of importation that is, simply, bringing something into the United States. ATF affirmed that interpretation “roughly contemporaneously with enactment of the statute,” and it has “remained consistent over time.”⁵⁴ Neither statute carves out CBWs or FTZs as an exception. Compounding the problem, the NPRM cedes to customs authorities the question of what may be done with firearms in these zones, stating that CBP “is responsible for determining what operations pertaining to firearms conducted in a CBW are permissible” and that the FTZ Board is responsible for FTZs. Congress vested enforcement of the GCA and NFA in the Attorney General, and “[a] general delegation of decision-making authority to a federal administrative agency does not, in the ordinary course of things, include the power to subdelegate that authority beyond federal subordinates.”⁵⁵

V. The CBW FTZ NPRM Is Arbitrary and Capricious

The CBW FTZ NPRM “fail[s] to consider an important aspect of the problem,”⁵⁶ “relie[s] on factors which Congress has not intended it to consider,”⁵⁷ fails to “consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives,”⁵⁸ and fails to offer good reasons for the change in policy.⁵⁹

The NPRM’s main justification for including CBWs among the import exceptions appears to be that some members of the gun industry are already importing non-sporting weapons into CBWs in violation of ATF regulations.⁶⁰ Indeed, the NPRM candidly describes these businesses as “current non-compliant FFL importers.”⁶¹ This is the case, apparently, even though ATF previously issued an open letter to all federal firearms licensees, reminding them that “[t]o lawfully bring firearms into a CBW, the items must be importable under the GCA and NFA by meeting an exception” to the general prohibition on importation.⁶² Put another way: ATF is arguing that it is appropriate to change its regulations because some unscrupulous companies are violating those regulations. The

⁵² 18 U.S.C. § 921(a)(9).

⁵³ 26 U.S.C. § 5845(l).

⁵⁴ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024); *see also Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

⁵⁵ 91 Fed. Reg. at 25,239; *U.S. Telecom Ass’n v. FCC*, 359 F.3d 554, 566 (D.C. Cir. 2004).

⁵⁶ *State Farm*, 463 U.S. at 43.

⁵⁷ *Id.*

⁵⁸ *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1511 (D.C. Cir. 1984).

⁵⁹ *Southwest Airlines Co. v. FERC*, 926 F.3d 851, 856 (D.C. Cir. 2019).

⁶⁰ 91 Fed. Reg. at 25,238.

⁶¹ 91 Fed. Reg. at 25,240.

⁶² 2024 CBW Open Letter at 3.

States are hard pressed to see how this kind of encouragement of illegality is a proper factor to rely upon in support of this decision by a law enforcement agency.

The CBW FTZ NPRM identifies three alternatives: (1) maintain the status quo; (2) issue guidance that is substantively identical to the NPRM; and (3) the NPRM. In doing so, ATF overlooks several alternatives. First, if the agency is concerned that there is no functional difference between FTZs and CBWs,⁶³ it could prohibit importation into FTZs for any purpose, including storage. Second, given that ATF purports to receive numerous inquiries about what constitutes storage, it could issue guidance on what constitutes storage or it could issue an NPRM solely to define storage. And third, it could take enforcement action against companies that, after the issuance of the 2024 CBW Open Letter, continued to import guns illegally into CBWs or to use FTZs for any purpose other than storage for non-importable guns.

The NPRM's economic analysis is no more rigorous. Its claimed \$1.67 million in industry savings rests on an assumption ATF admits it cannot verify—that ten percent of FFL importers operate in CBWs—and the NPRM asserts that the proposal would “impose no costs” even while acknowledging that approximately 21,499 domestic manufacturers “may be indirectly and negatively affected” by expanded imports.⁶⁴

Finally, the CBW FTZ NPRM fails to consider the impacts on public safety that will flow from increased importation of otherwise prohibited guns and components thereof. Just as with the Dual-Use NPRM, the very predictable effect of this rule, if promulgated, will be the proliferation of military grade weaponry. That is not speculation: ATF acknowledges that it “has previously denied requests from importers who have sought permission to first bring nonsporting weapons (which generally cannot be imported under the GCA) into an FTZ or CBW in order to reconfigure or reassemble them into sporting configurations before bringing them into the United States.”⁶⁵ The proposed rule would authorize precisely those transactions—and, combined with the Dual-Use NPRM, would allow importers to strip otherwise-banned weapons for importable “dual-use” parts inside these zones. Additionally, there is every reason to believe that companies will exploit this loophole to import military grade weaponry, cut them up for parts, and then sell unserialized parts (such as triggers, grips, magazines, stocks, optics mounts, springs, sights, pins, and other parts) for the assembly of ghost guns (whether 3D printed or from kits). This is already happening, and the expansion of this practice will have real, devastating effects in the undersigned States.

⁶³ *Id.*

⁶⁴ 91 Fed. Reg. at 25,240–41.

⁶⁵ 91 Fed. Reg. at 25,239.

VI. Other Procedural Defects

ATF advanced this rule as part of a package the DOJ and ATF publicly described as the product of “partnership with the firearms industry,” and “trust and collaboration” with licensees.⁶⁶ Industry organizations have publicly claimed substantial authorship of the package, describing “months” of work with ATF and DOJ and taking credit for specific rule changes.⁶⁷ Where an agency relies on input from regulated parties — including legal theories, factual assertions, or draft language — the substance of that input must appear in the record so the public can respond and a court can assess the basis for the agency’s decision.⁶⁸ ATF should place into this docket all pre- and post-NPRM communications with industry representatives concerning these proposed rules, and reopen the comment period so the public and the States can respond.

Additionally, both NPRMs posit, without support, that “[t]his proposed rule would not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government.”⁶⁹ The States’ experience suggests otherwise, however. These rules will allow proliferation of non-sporting guns and gun parts. State law enforcement agencies will need to devote resources to interdiction of illegal imports and the predictable increase of violence, especially by international drug cartels. These rules will also undermine state firearms laws—such as prohibitions on untraceable firearms and assault-style firearms—that rely on the federal import prohibition as an upstream safeguard. Because these federalism effects are substantial and direct, both NPRMs require the consultation and federalism analysis called for by Executive Order 13132.

* * * * *

⁶⁶ See ATF, New Era of Reform: Modernize (May 12, 2026), <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform/modernize> (DOJ/ATF announcement materials describing the package).

⁶⁷ NSSF, NSSF Welcomes ATF Landmark Rulemaking Package (Apr. 29, 2026), <https://www.nssf.org/articles/nssf-welcomes-atf-landmark-rulemaking-package/> (stating that the package resulted from “months of NSSF working closely with the ATF and DOJ”); American Suppressor Association, ASA Statement on Nomination of Robert Cekada for ATF Director (Nov. 17, 2025), <https://americansuppressorassociation.com/news/asa-statement-on-nomination-of-robert-cekada-for-atf-director> (stating that ASA had “worked closely” with then-Deputy Director Cekada “to ensure law-abiding gun owners have a seat at the table in shaping policy”); Nat’l Rifle Ass’n, ATF Announces New Director, Historic Regulatory Overhaul (Apr. 30, 2026), available at <https://www.nraila.org/articles/20260430/atf-announces-new-director-historic-regulatory-overhaul>; Gun Owners of Am., Here’s What GOA Did for Your Gun Rights This Week (May 2, 2026), available at <https://www.gunowners.org/na040226/>.

⁶⁸ See, e.g., *Brennan v. Dickson*, 45 F.4th 48, 66 (D.C. Cir. 2022) (citation omitted); *United States v. N.S. Food Prods. Corp.*, 568 F.2d 240, 251–52 (2d Cir. 1977).

⁶⁹ 91 Fed. Reg. at 25,196; 91 Fed. Reg. at 25,241.

The undersigned States therefore urge ATF to withdraw the Dual-Use NPRM and the CBW FTZ NPRM, or, at a minimum, postpone any effective date under 5 U.S.C. § 705 pending judicial review.

Sincerely,



Letitia James
Attorney General of New York



Kristin Mayes
Attorney General of Arizona



Rob Bonta
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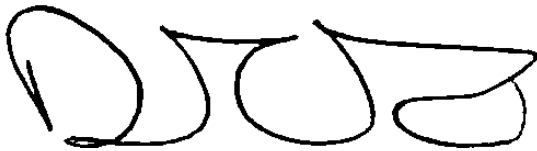
Jennifer Davenport
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Raúl Torrez
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Attorney General of North Carolina



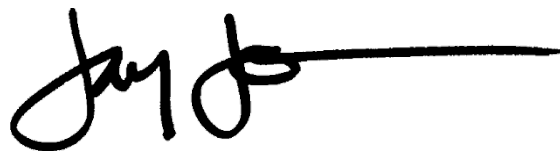
Dan Rayfield
Attorney General of Oregon



Peter Neronha
Attorney General of Rhode Island



Charity R. Clark
Attorney General of Vermont



Jay Jones
Attorney General of Virginia

A handwritten signature in black ink, appearing to read "Nicholas W. Brown". The signature is fluid and cursive, with the first name "Nicholas" being more prominent than the last name "Brown".

Nicholas W. Brown
Attorney General of Washington



ILLINOIS ATTORNEY GENERAL
KWAME RAOUL

August 4, 2026

Via Federal Rulemaking Portal (Regulations.gov)

The Honorable Todd Blanche
Acting Attorney General of the United States

Robert Cekada
Director of the Bureau of Alcohol, Tobacco,
Firearms and Explosives

c/o: ATF Rulemaking Comments
Mail Stop 6N-518, Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, DC 20226

ATTN: RIN 1140-AA82

Re: Revising Firearms Transaction Record, "Form 4473"

Dear Acting Attorney General Blanche and Director Cekada:

We, the Attorneys General for the States of Illinois, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawai'i, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington ("the States"), write in opposition to the Bureau of Alcohol, Tobacco, Firearms and Explosives' ("ATF") notice of proposed rulemaking ("Proposed Rule") entitled Revising Firearms Transaction Record, "Form 4473," first noticed in the Federal Register on May 8, 2026.¹

¹ *Revising Firearms Transaction Record, "Form 4473,"* 91 Fed. Reg. 25432 (proposed May 8, 2026) (to be codified at 27 C.F.R. pt. 478).

The Proposed Rule accompanies a slate of nearly three dozen ATF rule changes or proposed rule changes that reflect an agency which has “fundamentally changed course.”² Acting Attorney General Todd Blanche calls this the “most comprehensive regulatory reform package in the history of ATF.”³ Several of these proposed rules, working together, profoundly alter the processes by which a federal firearms licensee (“FFL”) sells or transfers firearms to an unlicensed person.⁴ That process is shepherded and documented through ATF Form 5300.9 and 5300.9A (“Form 4473”). The Proposed Rule would make changes to the requirements governing this process, as well as to Form 4473 itself.⁵

The Proposed Rule aims to expand the definition of the state of residence, even allowing certain individuals to simultaneously claim two states as their residence, and would allow use of non-government-issued documents as primary evidence of residence. It also would double the period of validity for an initiated Form 4473 and the accompanying background check, from the current 30 days to two months. Further, the Proposed Rule seeks to entirely change the process by which FFLs facilitate private-party transfers and background checks. As to the Form itself, the Proposed Rule would make several changes, including the removal of: (1) the FFL’s review and recordation of the buyer’s identification document details, (2) a key certification where the buyer must answer Yes or No on whether they intend to buy the firearm to transfer it for prohibited reasons, and (3) county and city information for the buyer. ATF also would allow auto-population of certain information, thereby making the information more prone to errors. Taken together, and

² *ATF’s New Era of Reform*, ATF, <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform> (last updated May 12, 2026).

³ ATF, *Acting AG Blanche and Acting ATF Director Cekada Announce Changes to ATF Regulations*, <https://www.justice.gov/opa/video/acting-ag-blanche-and-acting-atf-director-cekada-announce-changes-atf-regulations> (Apr. 29, 2026).

⁴ See *Firearm Records Retention Periods*, 91 Fed. Reg. 24413 (proposed May 6, 2026) (to be codified at 27 C.F.R. pt. 478) (shortening retention periods for Form 4473 and related records); *Firearms Transactions and Straw Purchases*, 91 Fed. Reg. 24448 (proposed May 6, 2026) (to be codified at 27 C.F.R. pt. 478) (narrowing prohibited straw-purchase definition); *Defining “Willfully” for Firearms Violations*, 91 Fed. Reg. 25201 (proposed May 8, 2026) (to be codified at 27 C.F.R. pt. 478) (raising the threshold for license revocation); *Revising Non-Over-the-Counter Firearms Transaction Requirements*, 91 Fed. Reg. 25216 (proposed May 8, 2026) (to be codified at 27 C.F.R. pt. 478) (expanding remote transfers and substituting copies of identification and remote identity proofing for in-person identification examination); *Clarifying Exceptions to the Brady Act Background Check Requirement*, 91 Fed. Reg. 24436 (proposed May 6, 2026) (to be codified at 27 C.F.R. pt. 478) (amending the regulatory structure involving NICS background checks for state firearms purchasing permits); *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462 (proposed May 6, 2026) (to be codified at 27 C.F.R. pts. 478, 479, and 555) (requiring individuals to select their biological sex under the question of “sex” on ATF forms); *Removing Youth Handgun Safety Act Notice*, 91 Fed. Reg. 25187 (proposed May 8, 2026) (to be codified at 27 C.F.R. pt. 478) (removing requirement that FFLs who deliver handguns to non-licensees post signs and provide written notice regarding the Youth Handgun Safety Act provisions for each handgun purchase).

⁵ In conjunction with this Proposed Rule, ATF separately proposed significant revisions to the Form 4473 itself through an information collection request. See 91 Fed. Reg. 25433; see also *60-Day Notice of Information Collection Request: Form 4473*, 91 Fed. Reg. 25448 (May 8, 2026). Several of the undersigned States submitted a comment opposing that request on July 7, 2026, and incorporate it by reference here. See Multistate Attorneys General Comment Opposing the Form 4473 Information Request, OMB Control No. 1140-0020, July 7, 2026, <https://www.regulations.gov/comment/ATF-2026-0001-0229>. Additionally, several of the undersigned States are separately submitting a comment in opposition to the proposed rule, *Selecting Biological Sex on ATF Forms*, 91 Fed. Reg. 24462 (proposed May 6, 2026), which also would impact Form 4473, and we incorporate that comment by reference here.

along with the other notices of changes to the sale process, these changes would undercut the security of the lawful firearm transfer process, as well as how Form 4473 is meant to operate as a tool to regulate that process, and to provide accurate and definitive documentation in the event it is required by law enforcement.

The States have substantial public safety and law enforcement interests that are harmed by these proposals, including preventing the unlawful transfer of firearms to prohibited persons, and successfully prosecuting criminals who break the law. By weakening both the initial screen and the resulting record, the Proposed Rule would make it more difficult for the States to prevent unlawful transfers, trace crime guns, investigate trafficking and violent crime, and prosecute offenders. The States—and their residents—would bear the resulting investigative costs and public safety harms. These are serious reliance interests that ATF cannot disregard.

The States submit this comment to protect those interests and identify the myriad ways in which the Proposed Rule violates the Administrative Procedure Act (“APA”). The Proposed Rule is contrary to law—specifically the Gun Control Act of 1968. It is also arbitrary and capricious, because ATF neither explains its reversal of longstanding policy nor considers the States’ reliance interests, among other things. And it is procedurally defective because ATF has failed to consider the impact of the entire regulatory package together, ATF has not disclosed the substance of outside influence that appears to have shaped the Proposed Rule, and ATF has failed to conduct an adequate Regulatory Impact Analysis.

Therefore, we urge ATF to withdraw the Proposed Rule.

Background

Form 4473 arises from the Gun Control Act of 1968 (“GCA” or the “Act”). The GCA was passed to aid federal, state, and local law enforcement in “their fight against crime and violence,”⁶ and particularly to address the pervasive problem of interstate firearms trafficking.⁷ To that end, the GCA channels commercial firearms sales through federally licensed dealers, requires specific transaction records on which crime gun tracing depends, and prohibits FFLs from transferring firearms to those who may not possess them.⁸ To comply with the GCA, FFLs must verify the identity (and accordingly the identification documents) of the purchaser.⁹ Because an FFL may not sell firearms to “any person who the licensee knows or has reasonable cause to believe does not reside in . . . the State” where the FFL does business,¹⁰ FFLs also must

⁶ Gun Control Act of 1968, Pub. L. No. 90-618, § 101, 82 Stat. 1213 (codified as amended at 18 U.S.C. §§ 921–934).

⁷ *Huddleston v. United States*, 415 U.S. 814, 824 (1974) (describing Congress’ intent to address the significant role that interstate firearms trafficking plays in contributing to “lawlessness and violent crime in the United States”).

⁸ See 18 U.S.C. §§ 921–934; see also Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, tit. IV, § 901(a)(3), 82 Stat. 197, 225 (congressional finding that “only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the businesses of importing, manufacturing, or dealing in them, can this grave problem be properly dealt with, and effective State and local regulation of this traffic be made possible”).

⁹ See 27 C.F.R. § 478.124(c)(3)(i).

¹⁰ 18 U.S.C. § 922(b)(3).

verify the transferee's residence, and, in most circumstances, conduct background checks through the FBI's National Instant Criminal Background Check System ("NICS").¹¹

ATF implements the GCA's firearm transaction record requirements for FFLs through Form 4473.¹² Form 4473 and its related regulations serve two primary purposes, both of which are essential to public safety.

First, FFLs use Form 4473 in their required process to determine if non-licensed transferees (buyers) may lawfully receive the firearm(s) sought.¹³ To do this, the Act requires that FFLs (1) determine if the individual may lawfully receive the firearm based upon the information provided and verified on Form 4473, and then (2) initiate a background check.¹⁴ ATF and industry organizations often herald FFLs as the "first line of defense" against illegal firearm sales, and Form 4473 is a key part of that defense.¹⁵ Just two years ago, ATF declared that Form 4473 is "critical to the prevention of criminal diversion of firearms" and crime gun tracing, and warned that transfers without a completed form and recorded NICS check would undermine the GCA, frustrate traces, and prevent verification of purchasers' identities and background checks.¹⁶

Second, even after the firearm has been transferred, Form 4473 maintains its importance.¹⁷ The information collected within Form 4473 "is critical to law enforcement," including "facilitating crime gun traces."¹⁸ Separate from verifying the identities of the individuals seeking

¹¹ See 27 C.F.R. § 478.102(a); see also 27 C.F.R. § 478.124(c)(1); 18 U.S.C. § 922(b)(5).

¹² 18 U.S.C. § 923(g)(1)(A) ("Each...licensed dealer shall maintain such records of...sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe."); 27 C.F.R. § 478.124(a) (stating a "licensed importer, licensed manufacturer, or licensed dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, unless the licensee records the transaction on a firearm transaction record, Form 4473").

¹³ See 18 U.S.C. § 922(b)-(d); 27 C.F.R. § 478.99.

¹⁴ See also 27 C.F.R. § 478.124(c)(5) ("The licensee shall sign and date the form if the licensee does not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm and transfer the firearm described on the Form 4473."); 27 C.F.R. § 478.102(a)(1) ("Before the completion of the transfer, the licensee has contacted NICS").

¹⁵ E.g., *NSSF, ATF Celebrate 25 Years of Partnership With The 'Don't Lie for the Other Guy' Anti-Straw Purchasing Campaign*, NAT'L SHOOTING SPORTS FOUND. (Sept. 15, 2025), <https://www.nssf.org/articles/nssf-atf-25-year-dont-lie-for-the-other-guy-partnership/>; *Abramski v. United States*, 573 U.S. 169, 188 (2014) (stating that "the firearms law contemplates that the dealer will check not the fictitious purchaser's but instead the true purchaser's identity and eligibility for gun ownership").

¹⁶ *Definition of "Engaged in the Business" as a Dealer in Firearms*, 89 Fed. Reg. 28968, 29053, 29089 (Apr. 19, 2024), <https://www.federalregister.gov/documents/2024/04/19/2024-07838/definition-of-engaged-in-the-business-as-a-dealer-in-firearms>.

¹⁷ Because FFLs must retain Forms 4473, 27 C.F.R. § 478.124(b) and 27 C.F.R. 478.129(b), federal and state law enforcement use them to trace crime guns, solve crimes, and ensure public safety. 18 U.S.C. § 923(g)(1)(B) ("The Attorney General may inspect or examine the inventory and records" of an FFL, *inter alia*, "in the course of a reasonable inquiry during the course of a criminal investigation" and "for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation."); see also *What happens to the data provided on Form 4473?*, ATF, <https://www.atf.gov/firearms/questions-and-answers> (last visited July 25, 2026) (apply category "ATF Form 4473" and navigate to question "What happens to the data provided on Form 4473?") ("ATF may inspect individual Forms 4473 containing personally identifying information held by FFLs only for limited regulatory or law enforcement functions . . . for example, when tracing firearms linked to individual criminal investigations").

¹⁸ *60-Day Notice of Information Collection Request: Form 4473*, 91 Fed. Reg. 25448 (May 8, 2026).

to obtain firearms and requesting the relevant background check, Form 4473 also requires that the FFL “identify the firearm to be transferred by listing . . . the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number” of the firearm prior to the transfer of the firearm.¹⁹ This information can help “link a suspect to a firearm in a criminal investigation” via crime gun tracing.²⁰

Form 4473 remains critical through criminal prosecutions as well.²¹ Several statutes make it a crime to make knowingly false statements “with respect to any fact material to the lawfulness of the sale” of a gun,²² or “with respect to the information required . . . to be kept” in the gun dealer’s records.²³ The clarity of the questions and answers on Form 4473 thus is essential to achieving conviction in those cases.

Discussion

I. The Changes in this Proposed Rule

Under the current regulations, an FFL can only transfer a firearm to a resident of the state where the FFL operates, with limited exceptions, and the buyer must prove residence with their government-issued identification document, even in circumstances where the individual has residences in different states and may lawfully purchase a firearm where they are currently living.²⁴ ATF now proposes to broadly expand the definition of state of residence so that a person may be considered a resident of a state “even if the person is not domiciled in that state.” Additionally, ATF proposes language that conflicts with the GCA and would allow military service members to simultaneously maintain two states of residency, where they essentially commute to work over state lines.²⁵

¹⁹ 27 C.F.R. § 478.124(c)(4).

²⁰ *National Tracing Center*, “The Tracing Process,” ATF, <https://www.atf.gov/firearms/tools-services-law-enforcement/national-tracing-center> (last updated September 19, 2024).

²¹ *See Huddleston*, 415 U.S. at 825 (explaining that ATF Form 4473 is a “means of providing adequate and truthful information about firearms transactions” to assist in the government’s detection of firearms that are either obtained for an illegal purpose or purchased by someone ineligible to own a firearm).

²² 18 U.S.C. § 922(a)(6).

²³ *Id.* § 924(a)(1)(A).

²⁴ *See* 27 C.F.R. § 478.124; 27 C.F.R. § 478.11 (defining “identification document” and “state of residence”); *see also* ATF Ruling 2001-5, *Identification of Transferee*, (Dec. 31, 2001), <https://www.atf.gov/firearms/docs/ruling/2001-5-identification-transferee/download>.

²⁵ Specifically, the GCA states, “a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.” 18 U.S.C. § 921(b) (emphasis added). In the corresponding regulation, ATF reiterates this definition. *See* 27 C.F.R. § 478.11 (“State of residence. . . If an individual is on active duty as a member of the Armed Forces, the individual’s State of residence is the State in which his or her permanent duty station is located, as stated in 18 U.S.C. § 921(b).”). ATF now proposes to substitute “is the State,” from the regulation, with “includes the State,” which would make the remainder of the sentence, “as stated in 18 U.S.C. 921(b),” inaccurate. 91 Fed. Reg. 25434.

The Proposed Rule also would allow an individual to use various *non-government-issued* documents as primary evidence of residence, such as leases and utility bills.²⁶ ATF’s rationale for this is that some individuals with multiple residences “are likely to have driver’s licenses, voter registrations, and car registrations from the states in which they are domiciled rather than their second residence address where they are stationed or attending school.”²⁷ These residency and identification changes would reduce the FFL’s ability to comply with state firearm laws as well as with the residency requirement in the GCA itself.

The Proposed Rule also would extend the period during which an initiated Form 4473 and its accompanying NICS background check are valid for a purchase, from the current 30 days to two months. ATF states that the “30-day time limit is causing many technical violations for FFLs,” specifically that this “technical violation, which has been cited among other substantive violations, contributed to revoking 95 federal firearms licenses, with another 237 FFLs receiving warning conferences” and that most “were within two calendar months of the original check.”²⁸ ATF claims that this change will not impact public safety, based entirely on the assertion that there are “no available statistics for how many purchasers who lawfully purchase firearms become prohibited persons between the first and second month after purchasing.”²⁹

Additionally, the Proposed Rule would allow “licensees [to] use Form 4473 to facilitate a private-party background check only if they do not take possession of the firearm.”³⁰ This is the exact opposite of current procedure, which requires an FFL facilitating a private-party NICS background check to “enter the firearm into the FFL’s A&D record as an acquisition from the private party seller.”³¹ ATF gives no explicit justification for this change, but simply includes it in a section entitled “Restructuring § 478.124,” implying it is for organizational and clarity purposes.

ATF proposes several other changes it frames as “non-substantive” form changes. For example, it proposes removing from § 478.124(c)(1) the requirement that transferees must state the “county or similar political subdivision and whether they reside within city limits.” The Proposed Rule argues that “transferees are often unsure how to answer the question or whether they live within formal city limits, in the county, or in another political subdivision” and claims that information is unnecessary for law enforcement because many “online sources . . . can provide

²⁶ Related to this change, the Proposed Rule would now require identity verification by a government-issued photo identification, not simply a government-issued identification, as the regulations currently provide. *See, e.g.*, 27 C.F.R. § 478.11 (defining “identification document”); 91 Fed. Reg. 25438.

²⁷ 91 Fed. Reg. 25433.

²⁸ 91 Fed. Reg. 25434.

²⁹ 91 Fed. Reg. 25435.

³⁰ 91 Fed. Reg. 25436.

³¹ ATF PROCEDURE 2020-2, ATF (Sept. 2, 2020), https://www.atf.gov/sites/default/files2/atf_proc_2020-2_recordkeeping_and_background_check_procedure_0_0_0.pdf; *see also* Open Letter to All Pennsylvania Federal Firearms Licensees, ATF (Dec. 29, 2005), <https://www.atf.gov/media/18301/download> (“NICS regulations prohibit FFLs from using NICS to conduct a background check on a person who is not attempting to acquire a firearm from the FFL. Therefore, in a ‘private transfer,’ an FFL who conducts a [background] check without taking a firearm into inventory would violate NICS regulations.”).

necessary information about a person's political subdivision using the person's residence address."³²

The Proposed Rule also would remove the requirement that "licensees certify that they do not know or have reason to believe the transferee intends to sell or dispose of the firearm to a prohibited person or intends to use the firearm in furtherance of a felony, terrorism, or drug trafficking."³³ This is reflected on the current Form 4473 by Yes/No questions *directed to the prospective buyer* that specifically ask whether they intend to buy the firearm to transfer it for these prohibited reasons, and then a final signature *by the FFL* that certifies, based on the buyer's answers, the FFL's review of verification documents, and the NICS check, that the FFL does not believe it is unlawful for them to transfer the firearm to the buyer. ATF now claims that this certification is covered under the FFL's general certification: "it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form,"³⁴ without the buyer's specific answers about intent to make a prohibited transfer or usage.

ATF also would no longer require that FFLs document the details of the buyer's identification document (type of document, date issued, date expired, document number) on Form 4473 and would allow the FFL to instead simply attach a copy.³⁵ This removes another security step that presently requires the FFL to closely review the identification document. It also separates the document details from the form contents, leaving the opportunity for it to be torn away and misplaced.

Finally, the Proposed Rule would allow FFLs to auto-populate certain information on the Form. ATF claims this is to "improve efficiency and eliminate errors caused by entering the information manually," ignoring that auto-population itself may cause errors, without the check that comes with manual entry, namely, that a person directly provides their own information.³⁶

II. The Proposed Rule Violates the Administrative Procedure Act.

These proposed changes violate the APA, which prohibits agency action that is contrary to law and arbitrary and capricious.³⁷ Under the APA, courts are "to set aside federal agency action that is 'not in accordance with law. . . .'"³⁸ This includes regulations "that are contrary to clear congressional intent."³⁹ Further, an agency action is arbitrary and capricious "if it is not reasonable and reasonably explained."⁴⁰ Agency decisions are not reasonably explained when, among other

³² 91 Fed. Reg. 25437.

³³ 91 Fed. Reg. 25436.

³⁴ 91 Fed. Reg. 25436.

³⁵ *Id.*

³⁶ 91 Fed. Reg. 25437.

³⁷ 5 U.S.C. § 706(2)(A).

³⁸ *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (quoting 5 U.S.C. § 706(2)(A)).

³⁹ *United Farm Workers v. United States Dep't of Lab.*, 509 F. Supp. 3d 1225, 1235 (E.D. Cal. 2020) (internal quotation marks omitted); *see also Fed. Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981) ("[Courts] must reject administrative constructions of the statute, whether reached by adjudication or by rule-making, that are inconsistent with the statutory mandate or that frustrate the policy that Congress sought to implement.") (citations omitted).

⁴⁰ *Ohio v. Env't Prot. Agency*, 603 U.S. 279, 292 (2024) (internal quotation marks and citations omitted).

things, “the agency has . . . entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency. . . .”⁴¹ Where an agency changes a prior position, it is required to “display awareness that it *is* changing position” and “must show that there are good reasons for the new policy.”⁴² An agency must provide a “more detailed justification” for a change where “its prior policy has engendered serious reliance interests. . . .”⁴³

Several changes in the Proposed Rule are contrary to law because they affirmatively frustrate the GCA’s purposes and the congressional intent underlying the Act. These changes are also arbitrary and capricious because ATF failed both to acknowledge and consider the serious reliance interests of the States in overhauling Form 4473 and provide an adequate justification for it. The States urge ATF to withdraw this Proposed Rule.

A. The State of Residence and Identification Document Proposal Is Contrary to Law and Arbitrary and Capricious.

ATF’s expansion of the definition of state of residence, generally and for military personnel, as well as loosening the ways in which a person can prove their residence, are sweeping changes that, working together, contravene the purposes of the GCA by making it easier for individuals to purchase firearms unlawfully. In addition to undermining the GCA, the Proposed Rule reflects arbitrary and capricious action. ATF’s justification, to add “convenience and flexibility”⁴⁴ to the process of buying a firearm, does not outweigh the serious public safety impact of these changes.

1. This Proposal Undermines the Purpose of the GCA.

The GCA’s purpose is to keep firearms “out of the hands of those not legally entitled to possess them[,]”⁴⁵ as well as to provide a reliable and accurate source of information for law enforcement investigating crimes and tracing firearms. Core to the GCA is the judgment “that there was a serious problem of individuals going across State lines to procure firearms which they could not lawfully obtain or possess in their own State,” and that absent federal restrictions on firearms trafficking, state and local law enforcement would not be able “to control this traffic within their own borders through the exercise of their police power.”⁴⁶

To that end, the GCA makes it unlawful for an FFL to sell firearms (with some exceptions) to “any person who the licensee knows or has reasonable cause to believe does not reside in . . . the

⁴¹ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

⁴² *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

⁴³ *Id.*

⁴⁴ 91 Fed. Reg. 25439.

⁴⁵ *Abramski*, 573 U.S. at 181 (internal citations omitted).

⁴⁶ *Mance v. Sessions*, 896 F.3d 699, 705–06 (5th Cir. 2018) (citing Congress’ findings in the GCA); *see also Navegar, Inc. v. United States*, 192 F.3d 1050, 1063 (D.C. Cir. 1999) (describing “the widely accepted knowledge that there is a vast interstate market in firearms that makes the states unable to control the flow of firearms across their borders or to prevent the crime inevitably attendant to the possession of such weapons once inside their borders.”).

State in which the licensee’s place of business is located. . . .”⁴⁷ The FFL must therefore determine the state in which the purchaser resides.⁴⁸

Firearms obtained in states with looser firearms laws are routinely trafficked into jurisdictions with stricter laws. From 2017 to 2021, 27% of traced guns, or 390,154 guns, were recovered in a state other than where they were originally sold.⁴⁹ And, for example, in 2024, 16% of firearms recovered in Illinois and successfully traced to the final dealer of record originated in the neighboring state of Indiana.⁵⁰ To provide another example, in 2021, just over half (50.4%) of the firearms recovered by law enforcement in California and successfully traced to a final dealer of record were traced to dealers located in other states.⁵¹

By broadly expanding the definition of state of residence and allowing a wide array of documents without any governmental source to confirm residence, the Proposed Rule would make it much easier for individuals to purchase firearms in a state in which they are not a resident, including firearms that are *illegal to possess in the person’s actual state of residence*. It would do so by allowing a person to claim residence of a state for firearm purchase purposes “even if the person is not domiciled in that state[.]”⁵² and would in turn additionally frustrate state laws that prohibit the importation of firearms purchased in another state.⁵³ And while the Proposed Rule provides examples of what this may include, there is no limiting principle to this proposed definition, and it would allow a prospective buyer to be considered a resident where they are not. As a result, the Proposed Rule would make it harder for FFLs to determine if a prospective buyer is a resident (albeit part-time) of the state where the FFL is located and therefore make it easier for traffickers to operate.

Specifically, the Proposed Rule opens the door to several scenarios where it is unclear how the FFL should determine the buyer’s residence and the legality of their purchase. For example, is the buyer a resident of a state in which their significant other resides and where they spend a significant amount of time? Are they a resident of the state where their place of employment or business is located? The Proposed Rule leaves it up to individual FFLs, without any guidance, to determine case-by-case.

⁴⁷ 18 U.S.C. § 922(b)(3).

⁴⁸ In recognizing that “some valid government-issued identification documents do not include the bearer’s current residence address,” ATF has allowed such identifications documents to be supplemented with another valid government-issued document that shows the bearer’s current address. ATF Ruling 2001-5, *Identification of Transferee*, (Dec. 31, 2001), <https://www.atf.gov/firearms/docs/ruling/2001-5-identification-transferee/download>.

⁴⁹ *Five Things to Know About Crime Guns, Gun Trafficking, and Background Checks*, Everytown Research & Policy (Oct. 10, 2022), <https://everytownresearch.org/report/five-things-to-know-about-crime-guns/>.

⁵⁰ *Firearms Trace Data: Illinois – 2024*, ATF (July 24, 2025), <https://www.atf.gov/firearms/report/firearms-trace-data/firearms-trace-data-illinois-2024>.

⁵¹ See California DOJ Office of Gun Violence Prevention, *Data Report: The Impact of Gun Violence in California*, p. 17-18 (Aug. 2023), <https://oag.ca.gov/system/files/media/OGVP-Data-Report-2022.pdf>.

⁵² 91 Fed. Reg. 25443.

⁵³ See, e.g., CAL. PENAL CODE § 27585.

Further, this broad definition, combined with the option to use non-government-issued documents to prove residence, creates a loophole to evade the firearm laws of the state in which a buyer resides. The following are just two scenarios facilitated by the Proposed Rule:

- An Illinois parent is on their college-age child's lease and utility bills while the child attends college in Missouri. Knowing that assault weapons are banned in Illinois, the Illinois parent uses their passport and their child's lease and utility bills to purchase an assault weapon in Missouri and brings it back to Illinois.
- An Illinois resident who used to live in Indiana is engaged in a straw-purchasing scheme. Because they have purchased firearms from several Illinois FFLs and want to avoid being flagged as a suspect buyer, they use old bank statements and a cancelled check with an Indiana address, along with a government-issued photo ID with no residential address, to purchase guns in Indiana. They then traffic them into Illinois.

The Proposed Rule also makes it much easier for an individual to purchase a firearm with fake documentation. Blank residential lease forms are widely available and need only be filled out, printed, and signed to appear legitimate.⁵⁴ Any document available as a PDF for printing at home can be quickly and easily edited before printing, something that many gun traffickers will surely do if this Proposed Rule is finalized.

The identification-document changes extend to digital credentials as well. The Proposed Rule would permit an FFL to accept a digital identification document whenever such documents are commonly accepted in the state where the FFL's premises are located—the law of the FFL's state, not the issuing state, supplies the criterion.⁵⁵ Yet nothing in the Proposed Rule requires any mechanism for verifying a digital credential's authenticity or revocation status with the issuing authority in real time, despite known and growing counterfeit and screenshot-based attacks on mobile identification documents. ATF nowhere considered conditioning acceptance of digital identification on the existence of a real-time verification mechanism—an obvious alternative the APA required it to address.

Finally, the Proposed Rule aims to allow members of the armed forces to *simultaneously* have two states of residency based on the fact that they commute to work across state lines.⁵⁶ Specifically, the Proposed Rule seeks to substitute the word “is,” for “includes,” in order to “avoid[] any such implication” that a member of the armed forces would have only one state of residency.⁵⁷ This proposal is not consistent with the plain language of the GCA, which clearly states that the individual “*is* a resident of the state in which his permanent duty station is located.”⁵⁸ These changes frustrate the GCA's purposes and are contrary to congressional intent.

⁵⁴ See, e.g., *Lease Agreement Template*, <https://rentalleaseagreements.com/> (last visited July 31, 2026).

⁵⁵ 91 Fed. Reg. 25434 (proposed changes to 27 C.F.R. § 478.11).

⁵⁶ 91 Fed. Reg. 25434. Proposed Example 6 (91 Fed. Reg. 25443) confirms ATF's intent to allow military members two states of residency simultaneously. It also conflicts with Examples 1 and 2 of the current regulation, as well as the plain language of the GCA, under which travel for work does not create residence and a person with homes in two states is a resident of each only while present there. 27 C.F.R. § 478.11.

⁵⁷ 91 Fed. Reg. 25434.

⁵⁸ 91 Fed. Reg. 25434 (emphasis added); see also 18 U.S.C. 921(b) (emphasis added).

2. The Proposed Rule Lacks Adequate Justification and Ignores Reliance Interests.

ATF primarily justifies its proposed changes with a claim that the changes will add “convenience and flexibility”⁵⁹ to the process of buying a firearm. This is insufficient in contrast to the public safety harm that would flow from the changes.

That ATF would require government-issued identification to prove identity but not residence shows the arbitrariness of this action. This indicates ATF understands the need to verify identity and how to do so reliably, but has little concern for the residency rules, which are of particular interest to the States. ATF would allow proof of residency sourced from private individuals or entities (such as a residential lease). ATF asserts that these documents “often provide the best primary evidence of residence and are routinely the evidentiary basis upon which state governments list a person’s address on the driver’s license or state identification card.”⁶⁰ ATF provides no citation to back up this claim. Even if true, ATF fails to consider that such documents have no imprimatur of accuracy, unlike a government-issued identification, and that purchasers with an interest in falsifying their residency will have no problem doing so.

Further, ATF provides no data as to why this change is necessary for enhanced “convenience and flexibility” nor why the current system is inadequate. For example, ATF does not explain adequately (or at all) why a person in these categories cannot reasonably acquire the required documentation under the current scheme. Indeed, ATF has already issued a ruling that allows people with residences not yet reflected by their government ID to prove residence with government-issued documents.⁶¹

ATF also invokes the REAL ID Act⁶² and how the new list of acceptable documents to prove residence is being brought into alignment with those accepted by most states issuing REAL ID-compliant identification.⁶³ But ATF never explains why documents sufficient for a state agency’s supervised ID-issuance process should suffice at a firearms counter—or why the resulting government-issued ID should no longer be required for proof of residence.

Failure to provide an adequate justification is especially problematic because the Proposed Rule also entirely ignores serious reliance interests. The States have a vested interest in making sure that state laws are followed during firearm transactions. The residency requirement is a key part of this. For example, many states have banned (or otherwise restricted) the sale of assault weapons,⁶⁴ and their laws must be followed by residents of, and within, their state. Crime guns recovered in states with strict gun control laws are often acquired in neighboring states with more

⁵⁹ 91 Fed. Reg. 25439.

⁶⁰ 91 Fed. Reg. 25433.

⁶¹ ATF Ruling 2001-5, *Identification of Transferee*, (Dec. 31, 2001), <https://www.atf.gov/firearms/docs/ruling/2001-5-identification-transferee/download>.

⁶² REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302.

⁶³ 91 Fed. Reg. 25438.

⁶⁴ E.g., Cal., CAL. PENAL CODE §§ 30500-31115; Conn., CONN. GEN. STAT. §§ 53-202a – 53-202o; Del., DEL. CODE TIT. 11, § 1466(A); D.C., D.C. CODE ANN. §§ 7-2502.02(A)(6), 7-2505.01, 7-2505.02(A); Haw., HAW. REV. STAT. ANN. §§ 134-1, 134-4, 134-8; Ill., 720 ILCS 5/24-1.9-1.10; Md., MD. CODE ANN., CRIM. LAW §§ 4-301 – 4-306, MD. CODE ANN., PUB. SAFETY § 5-101(R); Mass., MASS. GEN. LAWS Ch. 140, §§ 121, 122, 123, 131M; N.J., N.J. STAT. ANN. §§ 2C:39-1w, 2C:39-5, 2C:58-5, 2C:58-12, 2C:58-13; N.Y., N.Y. PENAL LAW §§ 265.00(22), 265.02(7), 265.10, 400.00(16-A); R.I., R.I. GEN LAWS §§ 11-47.2-1, 2; And Wash., REV. CODE WASH. (ARCW) Title 9, Ch. 9.41.

permissive markets.⁶⁵ The States have, up until now, relied upon the federal regulation's state residency requirement in order to reduce this type of illegal misconduct. If that now becomes illusory, the States will be forced to devote additional enforcement and intelligence resources to interdiction of illegally purchased guns from out-of-state.

These residency and identification changes, where ATF only considered the possibility of slight inconveniences for legal purchases, rather than the reality of intentional criminal acts, are plainly arbitrary and capricious.

B. The Doubling of the Validity Period for the NICS Background Check and Initiated Form 4473 Should Be Withdrawn.

Doubling the validity period of an initiated Form 4473 and its accompanying NICS background check—from the current 30 days to two months—would harm public safety for no sufficient, demonstrable benefit.

This proposal violates the APA in several ways. First, it is inconsistent with the GCA, as amended by the Brady Handgun Violence Prevention Act (“Brady Act”), and so is contrary to law. The GCA is meant “to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence[.]”⁶⁶ This includes by ensuring a firearm is not transferred “pursuant to a ‘stale’ NICS check.”⁶⁷ ATF recognizes that this change could create “a risk that a person could become prohibited between the first and second months after the background check” but dismisses the idea because “it has no evidence (even anecdotal evidence) suggesting that the risk is high.”⁶⁸ However, ATF's own data refute that dismissal. The Proposed Rule reports 14,632 “delayed denials”⁶⁹ between 2020 and 2024—purchasers already prohibited at the initial check who nonetheless received a firearm—including an annual average of approximately 360 delayed denials resolved in the 31-to-60-day window.⁷⁰

Further, the Brady Act contemplates that the FFL will conduct the NICS check as close to the transfer as possible, to best effectuate its goal of public safety. Indeed, in initially imposing the 30-day limitation on the validity of the NICS check and Form 4473, ATF noted “it is clear that the Brady law contemplates that the licensee should contact NICS *immediately* prior to the transfer of a firearm.”⁷¹ Because the Proposed Rule would allow the FFL to conduct the NICS check and complete Form 4473 further removed in time from the actual transfer, it is plainly contrary to law.

Second, the proposal violates the APA because it is arbitrary and capricious. ATF promulgated the 30-day limitation to balance public safety against state-mandated waiting

⁶⁵ *Supra* notes 49, 50, and 51.

⁶⁶ Gun Control Act of 1968, Pub. L. No. 90-618, § 101, 82 Stat. 1213 (codified as amended at 18 U.S.C. §§ 921–934).

⁶⁷ *Implementation of Public Law 103-159, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act*, 63 Fed. Reg. 58272, 58275 (proposed Oct. 29, 1998) (codified at 27 C.F.R. pts. 178 and 179).

⁶⁸ 91 Fed. Reg. 25435.

⁶⁹ The Proposed Rule contains two figures for “delayed denials”: 14,632 in the narrative of the preamble, and 14,636 in Table 2. 91 Fed. Reg. 25440.

⁷⁰ 91 Fed. Reg. 25440, Table 2.

⁷¹ 63 Fed. Reg. 58274 (emphasis added).

periods.⁷² In reaching this compromise, ATF explicitly declined to adopt a longer time period and emphasized that FFLs “should try to avoid lengthy delays between the time the NICS check is conducted and the time the firearm is transferred.”⁷³ In the Proposed Rule, ATF takes a step back from this position and determines that the extension “strikes a better balance between avoiding unnecessary regulatory violations while preserving public safety.”⁷⁴ However, it does not explain why this is the case nor does it meaningfully account for the reliance interests as required by the APA.⁷⁵

ATF’s proffered rationale behind the change is inadequate. It states that the current 30-day limit “is causing many technical violations for FFLs”—specifically 1,050 violations in 5 years, 78% of which were within two calendar months of the original check—which “has been cited among other substantive violations, contributed to revoking 95 federal firearms licenses, with another 237 FFLs receiving warning conferences.”⁷⁶ But selling a firearm on an expired background check is hardly technical—it directly undermines the purpose and effectiveness of the GCA’s background check system. ATF’s 78% figure also undermines the choice the agency made. If more than three-quarters of the violations occur within two calendar months of the original check, a far more modest extension—to 45 days, for example—would capture most of the asserted compliance benefit while preserving a meaningful re-screening interval for purchasers whose circumstances change after the initial check. Yet ATF treated the choice as binary between the status quo and a doubling, analyzing no intermediate alternative. The States do not offer such an alternative as a substitute for withdrawal, but an obvious and less harmful alternative of this kind must be addressed, and ATF’s failure to consider it is independently arbitrary and capricious.⁷⁷

Further, while ATF claims that the violations “burden FFLs and their employees,” it admits that the violations carry no “financial penalties.”⁷⁸ It claims these violations contributed to revoking 95 licenses but identifies 1,050 violations for transferring post 30 days in the past 5 years, reflecting that these violations only result in the revocation of a license after several repeat violations. In any event, out of more than 128,000 FFLs in operation, these numbers are not significant.⁷⁹

The Proposed Rule also speculates that the extension would reduce FFLs’ need to repeat the process in that 30- to 60-day window.⁸⁰ But again, ATF provides no data to suggest this is a

⁷² 63 Fed. Reg. 58274.

⁷³ 63 Fed. Reg. 58274.

⁷⁴ 91 Fed. Reg. 25435.

⁷⁵ *Fox Television Stations*, 556 U.S. at 515, and *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).

⁷⁶ 91 Fed. Reg. 25434.

⁷⁷ See *State Farm*, 463 U.S. at 46–51 (agency must address obvious alternatives and give adequate reasons for their abandonment); *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (agency must consider alternatives within the ambit of the existing policy).

⁷⁸ 91 Fed. Reg. 25439.

⁷⁹ The extension also could not be justified by analogy to the Brady Act’s treatment of certain state-issued permits as alternatives to a point-of-sale NICS check. 18 U.S.C. § 922(t)(3); 91 Fed. Reg. 25435. A qualifying permit issues only after a state investigation, subject to continuing revocation authority; an FFL has no comparable relationship with a buyer who returns on day sixty. *Id.*

⁸⁰ 91 Fed. Reg. 25439.

burden. Indeed, ATF previously has recognized that FFLs can take certain precautions in order to not violate the 30-day rule or have to repeat the process, including by “conduct[ing] the NICS check after the firearm comes in, rather than at the time that the order is placed” in the event a longer delay is expected.⁸¹ Thus, this speculation wholly fails to meet the “more detailed justification” test the APA requires.⁸²

Finally, ATF asserts that there is no evidence this change will “adversely impact public safety,”⁸³ but does not describe what steps it took to look for such evidence. The Brady Act is fundamentally about public safety, and doubling the length of the validity of a NICS check cannot reasonably be seen as a net zero impact on public safety. Given the extensive evidence that the current background check system works, ATF’s decision to dramatically alter that system should have *some* basis in evidence. The proposal should be withdrawn.

C. The Private Transfer Change Conflicts with the GCA and Lacks Justification.

ATF proposes to revise the regulations to preclude an FFL who is “facilitating a background check” from taking “the firearm into the licensee’s inventory . . . or facilitate the transfer in any other way.”⁸⁴ This is an unexplained reversal from current ATF procedure, which encourages FFLs to facilitate background checks for private transfers and require that, when doing so, the FFL take the firearm into its inventory and log the firearm into their A&D book.⁸⁵ As ATF has recognized, there are important reasons for this procedure: namely, to enhance public safety and assist law enforcement, particularly with respect to crime gun tracing.⁸⁶

ATF’s ability to trace crime guns depends heavily on records kept by licensed retailers, and thus private sales present a crime-gun-tracing obstacle.⁸⁷ That is why, up until this point, ATF has encouraged FFLs to facilitate private sales, recording the sale via Form 4473 and in the FFL’s A&D book.⁸⁸ Despite this profound public safety concern and benefits to law enforcement, the

⁸¹ 63 Fed. Reg. 58275.

⁸² *Fox Television Stations*, 556 U.S. at 515.

⁸³ 91 Fed. Reg. 25435.

⁸⁴ 91 Fed. Reg. 25446.

⁸⁵ ATF PROCEDURE 2020-2 (Sept. 2, 2020), https://www.atf.gov/sites/default/files2/atf_proc.2020-2_recordkeeping_and_background_check_procedure_0_0_0.pdf (hereinafter, “ATF PROCEDURE 2020-2”); *see also Open Letter to All Pennsylvania Federal Firearms Licensees*, ATF (Dec. 29, 2005), <https://www.atf.gov/media/18301/download> (“NICS regulations prohibit FFLs from using NICS to conduct a background check on a person who is not attempting to acquire a firearm from the FFL. Therefore, in a ‘private transfer,’ an FFL who conducts a [background] check without taking a firearm into inventory would violate NICS regulations.”).

⁸⁶ ATF PROCEDURE 2020-2, at 2.

⁸⁷ 89 Fed. Reg. 29083 (when a firearm is transferred by an unlicensed person, records enabling a trace rarely exist); *id.* (ATF can “determine the purchaser in 77 percent” of law enforcement’s trace requests “[l]argely as a result of the records the GCA requires licensees to maintain”).

⁸⁸ ATF PROCEDURE 2020-2. Several states, such as Illinois, have gone a step further and require background checks on private sales and require FFLs (or state police) to facilitate those private sales. *See, e.g.*, 430 ILCS 65/3(a-10) (“[A]ny person who is not a federally licensed firearm dealer and who desires to transfer or sell a firearm or firearms to any person who is not a federally licensed firearm dealer shall, before selling or transferring the firearms, contact a federal firearm license dealer . . . to conduct the transfer or the Illinois State Police with the transferee’s or purchaser’s Firearm Owner’s Identification Card number to determine the validity of the transferee’s or purchaser’s Firearm

Proposed Rule essentially prohibits the FFL from creating a record of the transfer in its A&D book, thereby hampering law enforcement’s ability to trace firearms that were transferred via private sales. And even though the Proposed Rule still would require the FFL to fill out a Form 4473 for private sales, another one of ATF’s 34 proposed rules would shorten the retention period for Form 4473 used to facilitate voluntary private-party transfers to 90 days—after which there would be no record of the transfer, making the firearm virtually untraceable.⁸⁹ This proposal therefore plainly undermines the central purpose of the GCA and is contrary to law.

Moreover, this action is arbitrary and capricious because ATF does not even attempt to provide a justification for this change and ignores its public safety impacts.⁹⁰ Indeed, the Proposed Rule buries the change in a section entitled “Restructuring § 478.124,” implying it is merely organizational.

D. Other Changes Are Contrary to the GCA and Arbitrary and Capricious.

The Proposed Rule claims that several changes “make it easier for people to follow,” remove redundant language, and improve efficiency in completing the Form. In combination with the rest of ATF’s rulemaking package, however, these changes undermine the goals of the GCA and are contrary to law, and ATF’s efficiency justification is insufficient in light of the States’ serious reliance interests in the current Form.

First, the removal of political subdivision, county, and city limits information is contrary to the GCA. Because some counties, cities, and other government subdivisions may have firearm regulations and laws that are stricter than those under state law,⁹¹ this question is meant to assist FFLs in ensuring that they only transfer firearms to individuals who may lawfully possess that type of firearm in the locality where they reside, as well as to quickly identify the right law enforcement agency, when one must be contacted. Specifically, ATF acknowledges “[i]dentifying the subdivision or city limits in which a person resides allows ATF to identify the correct law enforcement authority to notify” under the 2022 NICS Denial Notification Act.⁹² Congress enacted that statute to ensure prompt notification of state, local, and tribal law enforcement when a prohibited person attempts to acquire a firearm in their jurisdiction,⁹³ and striking that field

Owner’s Identification Card under State and federal law, including the National Instant Criminal Background Check System.”); *see also* Cal. Penal Code § 27545 (requires private party transactions through FFL).

⁸⁹ *See Firearm Records Retention Periods*, 91 Fed. Reg. 24413 (proposed May 6, 2026) (to be codified at 27 C.F.R. pt. 478) (shortening retention periods for Form 4473 and related records). Several of the undersigned States are separately submitting a comment in opposition to that proposed rule and incorporate that comment by reference here.

⁹⁰ *Fox Television Stations*, 556 U.S. at 515; *see also Encino Motorcars*, 579 U.S. at 221–22 (“[A] reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy. It follows that an unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.”) (citations and quotations omitted).

⁹¹ For example, an ordinance in Cook County, Illinois generally prohibits the transfer of a firearm to any person “if the licensee or permit holder knows or reasonably should know that the person requesting the firearm has previously purchased or otherwise obtained a firearm within 30 days prior to the date on which the purchase or transfer is sought.” Cook County Ordinances Sec. 54-183. Illinois state law includes no such limit. *See also Kirk v. City of Morgan Hill*, 83 Cal. App. 5th 976 (2022) (holding Morgan Hill, CA ordinance requiring that the theft or loss of a gun be reported within 48 hours is not preempted by California state law, which requires missing guns be reported within five days).

⁹² 91 Fed. Reg. 25437.

⁹³ NICS Denial Notification Act of 2022, Pub. L. No. 117-103, 136 Stat. 49 (codified at 18 U.S.C. § 925B).

conflicts with the statutory framework and injects delay and error into the very notifications Congress sought to accelerate.

Other changes to Form 4473 are also contrary to the GCA. The Proposed Rule would remove a critical certification because it is purportedly duplicative of other certifications. It is not. ATF seeks to remove a Yes/No question, asking the buyer to confirm that they do not intend to purchase the firearm for specific prohibited reasons. That in turn allows the FFL to understand its obligations, provides a clear and direct warning of types of firearms sales that are prohibited, and—critically—makes the FFL’s more general certification that the sale is not unlawful meaningful. Removing this certification does not “lead to [less] misunderstandings,” but would likely increase the occurrence of prohibited sales.⁹⁴ Nor can these changes be assessed in isolation from the rest of ATF’s rulemaking package. In a contemporaneous proposal, ATF seeks to narrow straw purchasing prohibitions, exempting entire categories of purchases made on another person’s behalf.⁹⁵ Taken together, the two proposals would narrow the substantive offense while simultaneously degrading the record evidence used to detect and prove it—an interaction neither docket acknowledges, let alone analyzes.

The Proposed Rule also would allow FFLs to attach a copy of the buyer’s identification document to Form 4473 instead of copying the document information onto the Form itself. It also would allow auto-population of certain information into Form 4473. In the quest to maximize efficiency, however, these changes remove the essential close observation by the FFL to confirm the identity of the buyer. Indeed, FFLs identify potential straw purchasers by, among other things, closely observing the transferee during completion of the form, and carefully reviewing identification documents.⁹⁶ Auto-population and attaching a copy in lieu of closely reading and transcribing the identification document increases the likelihood that prohibited persons acquire firearms.

These changes are also arbitrary and capricious. The political subdivision, county, and city limits information is a longstanding requirement on the Form.⁹⁷ Address-to-jurisdiction lookups are not reliably accurate: Massachusetts alone contains multiple municipalities with easily

⁹⁴ Removing the transferee’s intent certifications also hampers straw purchase and false statement prosecutions under 18 U.S.C. §§ 922(a)(6) and 924(a)(1)(A), which rest on the clear, discrete questions and certifications of Form 4473: the government proves the knowingly false statement by pointing to the specific answer the buyer personally gave to a plain-English question. 18 U.S.C. §§ 922(a)(6), 924(a)(1)(A), 932; *see, e.g.*, 720 ILCS 5/24-3.5 (criminalizing false statements in connection with the purchase of a firearm); *State v. Pleva*, 203 N.J. Super. 178 (1985).

⁹⁵ *Firearms Transactions and Straw Purchases*, 91 Fed. Reg. 24448 (proposed May 6, 2026) (to be codified at 27 C.F.R. pt. 478). Several of the undersigned States are separately submitting a comment in opposition to that proposed rule and incorporate that comment by reference here.

⁹⁶ Don’t Lie for the Other Guy, ATF, “Retailers Are the First Line of Defense,” <https://www.atf.gov/firearms/tools-services-law-enforcement/atf-firearms-programs/dont-lie-other-guy> (last visited July 30, 2026); *see also* 27 C.F.R. § 478.124(c)(3)(i) (explaining that the FFL “shall verify the identity of the transferee by examining the identification document . . . presented, and shall note on the Form 4473 the type of identification used”); *see also* What is a Straw Purchase and What Should FFLs Know?, FFLGUARD (June 9, 2025), <https://www.fflguard.com/what-is-a-straw-purchase-and-what-should-ffls-know/> (noting that FFLs must remain vigilant to identify signs of straw purchasing, including address inconsistencies and identification documents that appear new, altered, or inconsistent with the buyer’s appearance).

⁹⁷ “The requirement that the form include ‘county’ has been in the regulations and on the form since 1988,” and the “similar political subdivision and whether [one] reside[s] within city limits” was added in 2022. 91 Fed. Reg. 25437.

confused names (e.g., Bridgewater and East Bridgewater; the three Brookfields), and border addresses, unincorporated areas, and tribal lands routinely produce ambiguous results in commercial geocoders. Nevertheless, ATF proposes to delete this question, asserting, without evidence, that people often “misread the word ‘county’ as ‘country,’” and because “many online sources” exist from which the FFL or law enforcement can obtain this information concerning an individual’s county (or similar subdivision) and whether they reside within city limits.⁹⁸ This would make it materially harder to prove that a prospective buyer lives in a jurisdiction where a particular firearm is prohibited, or that the FFL knew the sale of the firearm was illegal because the buyer is not required to provide specific residence information. Further, if transferees truly misread “county” as “country,” that is a problem solved by redesigning the field for clarity—an obvious alternative ATF never considered—not by deleting the question that makes statutory compliance practicable.

Several confusing things about the certification change—removing a Yes/No question asking the buyer to confirm that they do not intend to purchase the firearm for specific prohibited reasons—also demonstrate ATF has not engaged in reasoned decision-making. The Proposed Rule ignores the fact that the specific certification is one made by the prospective buyer, not the FFL. Section 478.124(c) requires the FFL to obtain a Form 4473 showing “certification that *the transferee* does not intend to purchase or acquire any firearm for sale or other disposition to a person so prohibited or in furtherance of any felony or other offense punishable by imprisonment for a term of more than one year, a Federal crime of terrorism, or a drug trafficking offense.”⁹⁹ And the Proposed Rule’s purportedly “new Form 4473’s FFL general certification” already is on the current Form, so presumably that existing certification was never a sufficient stand-in for the buyer’s more specific certification.¹⁰⁰ These gaffes “paint a picture of agency action that was not the product of reasoned decision-making, but of a rushed and pre-determined agenda.”¹⁰¹

The removal of the requirement for the FFL to review and provide details of the buyer’s identification also harms the process, particularly where ATF would allow significant auto-population. ATF’s only explanation for the change is a superficial assertion, without any evidence, that it will improve efficiency and reduce errors. However, as the Proposed Rule recounts, ATF previously instructed licensees not to auto-populate Form 4473 out of concern that doing so might make it difficult to prosecute individuals for making false statements if they did not personally enter the data.¹⁰² That concern is rooted in the statutes themselves: 18 U.S.C. §§ 922(a)(6) and 924(a)(1)(A) reach only statements knowingly made, and where a field was populated by software from a scanned document or a prior transaction, a defendant will argue that they did not make—or did not knowingly verify—the statement at issue. The Proposed Rule nowhere explains why the prosecutorial concerns that animated ATF’s prior instruction have now disappeared, and an unexplained reversal of this kind is arbitrary and capricious.¹⁰³

⁹⁸ *Id.*

⁹⁹ 27 C.F.R. § 478.124(c)(1) (emphasis added).

¹⁰⁰ ATF, FORM 4473, FIREARMS TRANSACTION RECORD, (Revised Aug. 2023) at p. 3, Section E, <https://www.atf.gov/media/18646/download>.

¹⁰¹ *Nat’l TPS All. v. Noem*, 166 F.4th 739, 774 (9th Cir. 2026) (Mendoza, J., concurring).

¹⁰² 91 Fed. Reg. 25437–38.

¹⁰³ *Fox Television Stations*, 556 U.S. at 515; *Encino Motorcars*, 579 U.S. at 221–22.

III. Procedural Defects Compound the Substantive Failures of the Proposed Rule.

The Proposed Rule suffers from several procedural defects that are independent of, and compound, its substantive shortcomings. The APA requires a transparent process that permits meaningful public participation, discloses the actual basis for agency action, and allows affected sovereigns and stakeholders to respond to the materials and assumptions that shaped the proposal. ATF did not satisfy those requirements.

First, even if the Proposed Rule itself did not violate the APA, which it does, it is a piece of a larger deregulatory scheme that weakens the system that Congress built to keep firearms “out of the hands of those not legally entitled to possess them.”¹⁰⁴ ATF has divided the administrative record in a way that makes the package harder to evaluate and challenge. The APA does not permit that kind of compartmentalized decision-making or gamesmanship. An agency must “examine the relevant data” and provide a reasoned explanation that shows a “rational connection between the facts found and the choice made.”¹⁰⁵ ATF cannot evade that requirement by asking the public to comment on the pieces while withholding analysis of the whole.

Second, ATF failed to conduct required state consultation under Executive Order 13132.¹⁰⁶ Section 6(a) of that EO requires every agency to maintain an accountable process to ensure “meaningful and timely input by State and local officials” in developing regulatory policies with federalism implications.¹⁰⁷ The Proposed Rule identifies no consultation with the States at all. Instead, the Proposed Rule appears to proceed from the premise that no federalism consultation was required. That conclusion required a reasoned explanation, particularly given the proposal’s obvious effects on state enforcement systems and public-safety responsibilities,¹⁰⁸ which ATF failed to provide.

Third, ATF failed to disclose the substance of the significant outside influence that appears to have shaped the Proposed Rule. In materials accompanying the rulemaking package, ATF states that “[n]one of these rules were drafted directly or indirectly by any member of the gun industry.”¹⁰⁹ Yet at the public announcement of the rulemaking package, the Department of Justice and ATF said the review leading to this Proposed Rule “included a consideration of industry and expert feedback and concerns.”¹¹⁰ ATF’s “New Era of Reform” materials describe the package as built on “partnership with the firearms industry” and “trust and collaboration.”¹¹¹ That message was reinforced at the announcement itself, where ATF Director Czekala boasted of “partnership”

¹⁰⁴ *Abramski*, 573 U.S. at 181 (internal citations omitted).

¹⁰⁵ *State Farm*, 463 U.S. at 43.

¹⁰⁶ Exec. Order No. 13132, § 1(a), 64 Fed. Reg. 43255, 43255 (Aug. 10, 1999).

¹⁰⁷ *Id.* § 6(a), 64 Fed. Reg. 43257.

¹⁰⁸ See Section II, *supra*.

¹⁰⁹ ATF, *ATF Launches New Era of Reform: Questions and Answers* (2026), www.atf.gov/rules-and-regulations/atf-launches-new-era-reform/questions-and-answers.

¹¹⁰ DOJ Press Release, *DOJ and ATF Announce Regulatory Reforms to Reduce Burdens on Law-Abiding Gun Owners and Businesses* (Apr. 29, 2026), www.justice.gov/opa/pr/doj-and-atf-announce-regulatory-reforms-reduce-burdens-law-abiding-gun-owners-and-businesses.

¹¹¹ ATF, *ATF’s New Era of Reform* (May 12, 2026), <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform>.

and conversations with “stakeholders,” while surrounded by industry representatives who themselves acknowledged their significant influence.¹¹² The Proposed Rule’s misrepresentation about this input violates the APA.¹¹³

IV. ATF’s Regulatory Impact Analysis Is Inadequate.

The Proposed Rule’s Regulatory Impact Analysis (“RIA”) fails to consider the full range of costs and harms of the Proposed Rule, including costs it will impose on the States, their residents, and law enforcement.¹¹⁴ Nor can the States assess the Proposed Rule’s real-world costs divorced from the entire deregulatory package. The only costs discussed relate to the validity-period doubling, and that analysis is lacking. ATF admits the change risks prohibited persons acquiring firearms but concludes that risk is minimal based on data regarding delayed denials—data that does not reflect the relevant cohort of those who become prohibited between 31 and 60 days. The RIA likewise assigns no cost to the enforcement consequences the States will bear from failed traces and impaired prosecutions. A cost-benefit analysis that credits speculative industry convenience while assigning zero value to concrete law-enforcement harms is not reasoned decision-making. Finally, ATF quantifies no meaningful benefit to industry, except to claim without support that the changes will reduce burden and add convenience and flexibility.¹¹⁵

Conclusion

The Proposed Rule would cause irreparable harm to public safety, harming the States, its law enforcement agencies, and its citizens. Many of those harms could not be undone after the fact: a firearm transferred to a prohibited person on a stale background check, a trace that fails for want of a reliable record, or a prosecution lost to an ambiguous form cannot be remedied retroactively. In short, these changes conflict with the GCA and lack the reasoned explanation the APA requires. The undersigned Attorneys General on behalf of the States, therefore, urge ATF to withdraw the Proposed Rule.

¹¹² See Statement of Robert Cekada, Acting AG Blanche and Acting ATF Director Cekada Announce Changes to ATF Regulations, Video (Apr. 29, 2026), <https://www.justice.gov/opa/video/acting-ag-blanche-and-acting-atf-director-cekada-announce-changes-atf-regulations>. Director Cekada stood before representatives of National Shooting Sports Foundation (“NSSF”), the National Rifle Association, the American Suppressor Association, and the Gun Owners of America (“GOA”). See also NSSF, *NSSF Welcomes ATF Landmark Rulemaking Package* (Apr. 29, 2026), <https://www.nssf.org/articles/nssf-welcomes-atf-landmark-rulemaking-package/>; The Weekly Reload Podcast, “How ATF’s New Regulations Change the Gun Industry (Ft. NSSF’s Larry Keane),” published May 10, 2026, <https://thereload.com/podcast-how-atfs-new-regulations-change-the-gun-industry-ft-nssfs-larry-keane/> (Larry Keane, NSSF’s Senior Vice President and General Counsel, claimed that ATF reached out to NSSF “as they were working on the drafts to get perspective from the industry.”); Nat’l Rifle Ass’n, *ATF Announces New Director, Historic Regulatory Overhaul* (Apr. 30, 2026), <https://www.nraila.org/articles/20260430/atf-announces-new-director-historic-regulatory-overhaul>; Gun Owners of Am., *Here’s What GOA Did for Your Gun Rights This Week* (May 2, 2026), <https://www.gunowners.org/na040226/>.

¹¹³ ATF should place into the administrative record *all* materials, including communications and documents, concerning pre-Proposed Rule and post-Proposed Rule discussions with industry representatives, trade associations, advocacy organizations, Members of Congress or their staff, and other stakeholders. ATF should then reopen the comment period for at least 90 days. Without these steps, any final rule will rest on a procedurally defective record.

¹¹⁴ *Supra* Section II.

¹¹⁵ 91 Fed. Reg. 25439.

Sincerely,



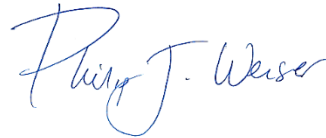
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Michigan Attorney General



Keith Ellison
Minnesota Attorney General



Aaron D. Ford
Nevada Attorney General



Jennifer Davenport
New Jersey Attorney General



Raúl Torrez
New Mexico Attorney General



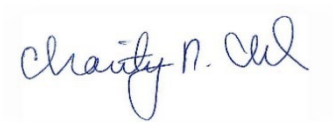
Letitia A. James
New York Attorney General



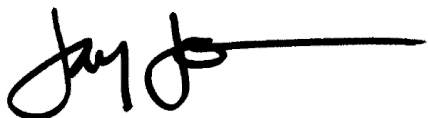
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Virginia Attorney General



Nick Brown
Washington Attorney General



August 4, 2026

Via Federal eRulemaking Portal

The Honorable Todd Blanche
Acting Attorney General of the United States

The Honorable Robert Cekada
Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

c/o: ATF Rulemaking Comments
Mail Stop 6N-518, Office of Regulatory Affairs Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)
99 New York Avenue, NE
Washington, DC 20226
ATTN: RIN 1140-AA85

Re: Multistate Comment Letter on “Clarifying Exceptions to the Brady Act Background Check Requirement,” 91 Fed. Reg. 24436 (May 6, 2026), Docket No. ATF-2026-0008, RIN 1140-AA85.

Dear Acting Attorney General Blanche and ATF Director Cekada:

We, the Attorneys General of New Jersey, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai’i, Illinois, Maine, Massachusetts, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington (“States”) object to this Proposed Rule. This Proposed Rule would undermine our Nation’s background check system, which seeks to ensure that firearms do not end up in the hands of straw purchasers or prohibited persons. The decision to undermine that system is both unlawful and unwise.

The Proposed Rule opens a significant loophole in the federal requirement that firearms sales and transfers to a non-licensee be subject to a National Instant Criminal Background Check (NICS) background check—a critical safeguard that has long helped ensure firearms are not possessed by those prohibited from possessing them. The Proposed Rule allows possession of certain state-issued firearms permits to serve as a substitute for a NICS check, even if the state permit was issued without the relevant state permitting official actually reviewing available criminal history information. The Proposed Rule would thus allow State permitting agencies and

federal firearms licensees (“FFLs”) to avoid conducting thorough background checks on firearms purchasers, weakening the efficacy of background check systems and thereby increasing the likelihood of prohibited-persons unlawfully obtaining firearms, with the attendant increased risk of illegal firearm purchases and weapons trafficking.

That abrupt policy change is not only dangerous, but unlawful. The Proposed Rule is contrary to the text of 18 U.S.C. § 922, and subverts the Brady Act’s purpose to implement a uniform process of background checks to keep firearms out of the hands of prohibited persons.¹ It is also arbitrary and capricious: the Proposed Rule further fails to acknowledge, let alone justify, the increased risk to public safety from its changes to the background check requirements, which will increase the likelihood that dangerous individuals will acquire dangerous weapons.

The Proposed Rule also must be considered in the context of ATF’s broader deregulatory package announced in April 2026—a package that eliminates a series of critical and common-sense firearms safety measures. The Proposed Rule accompanies a slate of nearly three dozen ATF rule changes or proposed rule changes that reflect an agency which has “fundamentally changed course.”² Deputy Attorney General Todd Blanche calls this the “most comprehensive regulatory reform package in the history of ATF.”³ By separating this massive rollback of firearms regulations into several discrete Proposed Rules, DOJ and ATF have attempted to obscure the broad scope of its changes and their concomitant harms. Indeed, the Proposed Rule’s impact to public safety is particularly concerning given the combined effect of weakening multiple regulations that have proven—over years of implementation—effective at curbing gun violence and saving lives.⁴ In short, the Proposed Rule’s changes will come at serious cost to public safety.

As the chief law enforcement officers of our States, we have a substantial interest in curbing gun violence and promoting the safe use of firearms. We urge ATF to preserve the current regulations governing NICS background checks and withdraw the Proposed Rule.

¹ H.R. Rep. 103-344 at 1988-89. *See also Abramski v. United States*, 573 U.S. 169, 172 (2014) (“Federal law has for over 40 years regulated sales by licensed firearms dealers, principally to prevent guns from falling into the wrong hands.”); Richard M. Aborn, *The Battle Over the Brady Bill and the Future of Gun Control Advocacy*, 22 Fordham Urban L.J. 417, 418–19 (1995).

² Bureau of Alcohol, Tobacco, Firearms, and Explosives, *ATF’s New Era of Reform* (May 12, 2026) <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform>.

³ Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Acting AG Blanche and Acting ATF Director Cekada Announce Changes to ATF Regulations*, at 04:40–04:47 (Apr. 29, 2026), <https://www.justice.gov/opa/video/acting-ag-blanche-and-acting-atf-director-cekada-announce-changes-atf-regulations>.

⁴ *See e.g.*, Connor Brooks, “Background Checks for Firearm Transfers, 2019–2020” at 1, U.S. Dep’t of Justice, Off. of Justice Programs, Bureau of Justice Statistics (Nov. 2023), <https://tinyurl.com/watwzp7t> (last visited Aug. 3, 2026); Erika Harrell et al., U.S. Dep’t of Justice, Bureau of Justice Statistics, *Trends and Patterns in Firearm Violence, 1993–2023* (Nov. 2024), <https://tinyurl.com/7jstr9eh> (last visited Aug. 3, 2026).

I. Background

A. ATF's Broad Deregulatory Package Would Dismantle Safeguards Congress Enacted To Prevent Mob Violence, Political Assassinations, and Mass Shootings.

ATF presents its overall deregulatory package as a “new era of reform” that will modernize federal firearms regulation and reduce burdens on businesses and gun owners.⁵ In reality, the package would undo decades of firearms regulations that have been protecting Americans from gun violence.⁶ The history of federal firearms regulation makes clear that the current regulations exist for sound policy reasons and should not be jettisoned to “reduce burdens” for the firearms industry.

Congress enacted the Gun Control Act (GCA) of 1968 in response to a tragic spate of gun violence. In 1963, a mail-order rifle, purchased under an alias from a Chicago catalog house, had been used to assassinate President John F. Kennedy. Dr. Martin Luther King, Jr. and Senator Robert F. Kennedy were shot dead within nine weeks of each other in the spring of 1968. Congress’s legislative solution was the GCA. The GCA requires commercial firearms sales to be conducted by federally licensed dealers, documented through records on which crime gun tracing depends, restricts the importation of firearms not suited to sporting purposes, and subjects the interstate and foreign movement of guns to federal oversight.⁷ The GCA seeks to keep firearms away from persons not legally entitled to possess them, with the licensed dealer serving as “the principal agent of federal enforcement.”⁸

⁵ *ATF's New Era of Reform*, *supra* note 2.

⁶ *See* Brooks, *supra* note 4, at 1 (“From the time that the Brady Act went into effect in 1994 to 2020, almost 291.7 million applications were subject to background checks and about 4.4 million (1.5%) applications were denied.”); *see also id.* at 7 (identifying felony convictions as the most common reason for denial, followed in order by state law prohibitions, drug use or addiction, domestic violence, mental health commitments or adjudications, fugitive-from-justice status, protection or restraining orders, and illegal entry into the United States.)

⁷ Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (codified as amended at 18 U.S.C. §§ 921–934); *see also* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, tit. IV, § 901(a), 82 Stat. 197, 225 (congressional findings that only federal control over interstate and foreign commerce in firearms could adequately assist state and local law enforcement); 114 Cong. Rec. 12303-11 (1968) (statement of Sen. Dodd) (describing the mail-order and interstate traffic the title was designed to reach). ATF’s website similarly describes the GCA. *See* Bureau of Alcohol, Tobacco, Firearms, and Explosives, “Gun Control Act of 1968” (Jan. 28, 2026), <https://www.atf.gov/rules-and-regulations/laws-alcohol-tobacco-firearms-and-explosives/gun-control-act> (last visited Aug. 3, 2026).

⁸ *Huddleston v. United States*, 415 U.S. 814, 824 (1974) (“Congress determined that the ease with which firearms could be obtained contributed significantly to the prevalence of lawlessness and violent crime in the United States.”); *id.* (the GCA’s “principal purpose” was “to curb crime by keeping ‘firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency’” (quoting S. Rep. No. 1501, 90th Cong., 2d Sess. 22 (1968))); *id.* (“Commerce in firearms is channeled through federally licensed importers, manufacturers, and dealers in an attempt to halt mail-order and interstate consumer traffic in these weapons. The principal agent of federal enforcement is the dealer.”); *accord Barrett v. United States*, 423 U.S. 212, 218 (1976) (“The very structure of the Gun Control Act demonstrates that Congress . . . sought broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous.”); *Lewis v. United States*, 445 U.S. 55, 67 (1980) (“[t]he federal gun laws” are designed “to keep firearms away from potentially dangerous persons”);

The Supreme Court reaffirmed that understanding just last year when it upheld ATF's regulation of untraceable "ghost guns" in *Bondi v. VanDerStok*.⁹ The Court recognized that the Act's "licensing, recordkeeping, and serialization requirements" exist "to assist law enforcement authorities in investigating serious crimes" and observed that thousands of law enforcement agencies depend on the tracing system those records make possible.¹⁰ In its briefing to the Court, the Department of Justice argued that firearms moving in commerce without background checks, records, or serial numbers would frustrate the GCA's design.¹¹

Congress has acted more recently as well. After the racially motivated murder of ten people at the Tops Friendly Market in Buffalo, New York, on May 14, 2022, and the murder of nineteen children and two teachers at Robb Elementary School in Uvalde, Texas ten days later, Congress passed the Bipartisan Safer Communities Act, the first major federal firearms law in several decades, which broadened the definition of those "engaged in the business" of dealing in firearms and created new federal straw-purchasing and trafficking offenses.¹²

Rather than "modernize" firearms regulations, many of the proposals in this package retreat from what the statutes require. For example, the proposal to rescind parts of the 2024 rule implementing the BSCA's definition of "engaged in the business" undermines the regulatory framework Congress broadened after Buffalo and Uvalde and narrows in practice the class of

Abramski, 573 U.S. at 180 (2014) (the Act seeks "to keep guns out of the hands of criminals" and "to assist law enforcement authorities in investigating serious crimes"); *Bondi v. VanDerStok*, 604 U.S. 458, 462 (2025) (recounting that the GCA was enacted "[s]hortly after the assassinations of Senator Robert F. Kennedy and Dr. Martin Luther King, Jr.," and observing that "thousands of law-enforcement agencies nationwide depend on the Act's tracing system").

⁹ 604 U.S. 458 (2025).

¹⁰ *VanDerStok*, 604 U.S. at 463 (quoting *Abramski*, 573 U.S. at 180).

¹¹ Br. for Pet'rs at 43, *Bondi v. VanDerStok*, (No. 23-852), (arguing on behalf of the United States that firearms and functional frames or receivers sold without background checks, transaction records, or serial numbers would frustrate the Act's design and impair law enforcement's ability to solve gun crimes).

¹² Bipartisan Safer Communities Act, Pub. L. No. 117-159, § 12002, 136 Stat. 1313, 1324–25 (2022) (codified at 18 U.S.C. § 921(a)(21)(C)) (broadening the class of persons "engaged in the business" of dealing in firearms); *id.* § 12004, 136 Stat. 1326–27 (codified at 18 U.S.C. §§ 932–933) (straw purchasing and trafficking offenses). The Act's origins are not a matter of inference. Announcing the bill on the Senate floor, the Majority Leader explained: "A little over a month ago, our Nation witnessed two of the most traumatic mass shootings seen in years: a racially motivated attack in Buffalo and the worst school shooting in years in Uvalde, TX," and described the legislation as "the first major gun safety bill in nearly 30 years." 168 Cong. Rec. S3046 (daily ed. June 22, 2022) (statement of Sen. Schumer). The Minority Leader likewise described it as "an important bipartisan bill to prevent mass murders, make schools safer, and protect the Second Amendment rights of law-abiding citizens." *Id.* at S3047 (statement of Sen. McConnell); accord Johnathan H. Duff, Cong. Rsch. Serv., R47310, Bipartisan Safer Communities Act (P.L. 117-159): Section-by-Section Summary 1 (2022) ("The BSCA was enacted in the aftermath of mass shootings in Uvalde, TX, and Buffalo, NY."); see also Definition of "Engaged in the Business" as a Dealer in Firearms, 89 Fed. Reg. 28968, 28972–73 & nn.28–34 (Apr. 19, 2024) (collecting the BSCA's legislative history); *id.* at 28968 (final rule implementing the BSCA provisions "that broaden the definition of when a person is considered 'engaged in the business'" as a dealer in firearms); Press Release, U.S. Dep't of Justice, "Fact Sheet: Two Years of the Bipartisan Safer Communities Act," Off. of Pub. Affairs (June 25, 2024) ("Since BSCA's passage: Over 260,000 U21 enhanced checks have been completed; 800 firearm purchases were prevented solely because the enhanced U21 checks revealed that the purchasers were prohibited by law from purchasing or possessing firearms."), <https://www.justice.gov/archives/opa/pr/fact-sheet-two-years-bipartisan-safer-communities-act> (last visited Aug. 3, 2026).

sellers will obtain licenses, run background checks, and keep the records on which tracing depends. Until weeks before this package was announced, the Department of Justice was defending the 2024 rule as a faithful implementation of the BSCA.¹³ As another example, the proposal to codify a definition of “willfulness” would heighten the standard governing license revocation and civil penalties, the principal tools Congress provided in 1968 for removing noncompliant dealers from the regulated system.¹⁴

Taken together, these proposals would reopen the commercial, import, transport, and enforcement gaps that Congress closed in 1934, 1968, and 2022. ATF may not recharacterize as “burden” what Congress enacted as protection. Nor may it misuse its statutory authority to make “only such rules and regulations as are necessary to carry out the provisions of this chapter,” 18 U.S.C. § 926(a),¹⁵ to make rules and regulations that subvert the provisions of that statute.

B. History of the Brady Act.

After the attempted assassinations of Ronald Reagan and James Brady in 1981, a bipartisan Congress enacted the Brady Handgun Violence Prevention Act of 1993 to amend the provisions of the Gun Control Act by creating NICS,¹⁶ a mandatory background check system for firearm purchasers. Administered by the United States Attorney General, NICS provides determinations of a prospective transferee’s eligibility to obtain a firearm.¹⁷ The Brady Act reflects a clear and well-documented congressional intent: prevent convicted felons and other legally prohibited persons from purchasing firearms from licensed dealers.¹⁸ The Act creates a mandatory nationwide background check system requiring FFLs to initiate a NICS check prior to transferring a firearm to a person.¹⁹ The system produces a stringent, but prompt, verification of the purchaser’s identity and eligibility under federal law.²⁰ Under this framework, Congress intended to “curb crime by keeping firearms out of the hands of those not legally entitled to possess

¹³ Defs.’ Opp’n to Pls.’ Mots. for TRO & Prelim. Inj. at 36, *Texas v. ATF*, No. 2:24-cv-00089-Z, ECF No. 31 (defending the 2024 rule as a lawful implementation of the BSCA); *see also* Br. for Appellants at 33-34, *Texas v. ATF*, No. 24-10612, ECF No. 48. An agency that changes position must “display awareness that it is changing position” and “show that there are good reasons for the new policy,” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009), and must account for the “serious reliance interests” the prior policy engendered, *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020).

¹⁴ Defining “Willfully” for Firearms Violations, 91 Fed. Reg. 25,201 (May 8, 2026); *see* 18 U.S.C. § 923(d)(1)(C)–(D), (e); *Bryan v. United States*, 524 U.S. 184, 191 (1998) (“As a general matter, when used in the criminal context, a ‘willful’ act is one undertaken with a ‘bad purpose.’”).

¹⁵ *See also VanDerStok*, 604 U.S. at 464 (describing § 926(a) as the source of the agency’s rulemaking authority under the Act).

¹⁶ Richard M. Aborn, *The Battle Over the Brady Bill and the Future of Gun Control Advocacy*, 22 Fordham Urban L.J. 417, 418-19 (1995); 18 U.S.C. § 922 (s) – (t) (1993).

¹⁷ 18 U.S.C. § 922(t)

¹⁸ *See Abramski*, 573 U.S. at 172 (noting that gun laws have been intended “principally to prevent guns from falling into the wrong hands”).

¹⁹ *Id.*; 91 Fed. Reg. 24,437.

²⁰ *Abramski*, 573 U.S. at 180.

them.”²¹ This background check system has been successful in the decades since the Brady Act’s passage.²²

The law includes an exception to NICS checks for persons who have certain state permits.²³ A NICS check is not required if the individual seeking to obtain a firearm presents the FFL with a license that (1) allows the person to possess or acquire a firearm; (2) was issued not more than five years earlier by the state in which the transfer is to take place; and (3) the law of the state provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such person would be in violation of law.²⁴

C. The Proposed Rule.

The Proposed Rule makes two changes to the Brady Act’s background check requirement, both of which undermine the effectiveness of the NICS system for preventing prohibited individuals from obtaining firearms. It purports to clarify subsection 922(t)(3)(A), which states that a NICS check is unnecessary only if the transferee presents a state-issued permit that is less than five years old, and only if “the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law.”²⁵ Instead, it harms both federal and state public safety efforts.

First, the Proposed Rule would minimize the efforts that state officials must undertake when conducting background checks for state permits, by re-defining “information available”²⁶ as only the information that is “readily accessible” to state officials,²⁷ while adding a new limitation that officials need not undertake “extraordinary effort, expense, or means” to review available information.²⁸ The Proposed Rule does not define either “extraordinary effort” or “readily accessible.”²⁹ The lack of clear standards for what constitutes “readily accessible” information and “extraordinary effort” leaves permitting authorities guessing at the requisite effort in conducting background checks, effectively lowering the bar to whatever the permitting authority deems feasible. Some state permitting authorities can access NICS directly, others—specifically those which are not “criminal justice agencies”—cannot.³⁰ The Proposed Rule’s vague, undefined

²¹ *Id.* at 181

²² *See e.g.* U.S. Dept. of Justice, Bureau of Justice Statistics Bulletin, A National Estimate: Presale Firearm Checks (Feb. 1997) (noting that over 70% of the rejected purchases were flagged as convicted or indicted felons in the early implementation of the Brady Act); *supra* note 4.

²³ 18 U.S.C. § 922(t)(3)(A).

²⁴ 18 U.S.C. § 922(t)(3)(A); 27 C.F.R. 478.102(d).

²⁵ 18 U.S.C. § 922(t)(3)(A).

²⁶ 18 U.S.C. § 922(t)(3)(A)(ii).

²⁷ 91 Fed. Reg. at 24,438.

²⁸ *Id.* (using, as an example, a misdemeanor assault conviction where criminal justice records may be incomplete and require addition research).

²⁹ *Id.*

³⁰ 28 C.F.R. 25.6(j)(1); 91 Fed. Reg. at 24,438 (noting Florida’s Department of Agriculture and Consumer Services as example of a non-criminal justice agency that issues permits but lacks access to NICS).

standards risk lowering the bar for what constitutes an acceptable criminal records check, allowing states to issue permits based upon cursory checks that will increase the likelihood of permits being issued to prohibited persons.

Second, ATF would take no steps to ensure that state authorities that issue firearms permits have issued them in compliance with the Brady Act.³¹ Under prior agency practice, ATF audited states to ensure that state firearms permits were not issued to prohibited persons, and withdrew recognition of state permits as “Qualifying Alternative Permits to NICS Check”³² if violations of the Brady Act occurred.³³ The Proposed Rule presupposes that states will inevitably issue permits to prohibited persons, yet abandons ATF’s prior enforcement practice of withdrawing recognition of states’ permits when licensing officials had erroneously issued permits to prohibited persons—a practice designed to ensure that state authorities comply with Section 922(t)(3)(A)(ii).³⁴ The Proposed Rule also suggests that ATF would no longer take any steps to ensure that purported Qualifying Alternative Permits are actually issued based on verification of information, as required by Section 922(t)(3)(A)(ii), instead deferring to state permitting authorities.

II. The Proposed Rule is Contrary to Law.

The Proposed Rule unlawfully lowers the standards for state permits that can serve as alternatives to a NICS check. Specifically, in describing the minimum investigative steps that must precede issuance of a qualifying state permit, it adopts an overly narrow interpretation of “information available to such official” to mean only information that is “readily accessible to that official” but not “information that can be obtained only through extraordinary effort, expense, or means.” The Proposed Rule’s interpretation conflicts with the plain statutory text and structure, undermines the Brady Act’s goals by incentivizing issuance of permits based on limited understanding of an applicant’s criminal history, and is inconsistent with ATF’s past practice. It thus enables more firearm purchases to circumvent background checks without an adequate substitute, increasing the likelihood of unlawful firearms sales and weapons trafficking. That poses the very risks addressed by the Brady Act, which effectuated a transition to a centralized instant-check system³⁵ and reinforced background check requirements to ensure dangerous persons do not obtain firearms.³⁶

³¹ 91 Fed. Reg. at 24,438 –39.

³² ATF, “Brady Permit Chart,” <https://www.atf.gov/rules-and-regulations/laws-alcohol-tobacco-firearms-and-explosives/gun-control-act/brady-law/brady-permit-chart> (last visited July 16, 2026).

³³ 91 Fed. Reg. at 24,438 –39 (discussing prior enforcement actions against Alabama and Michigan).

³⁴ *Infra* at Section III; 91 Fed. Reg. at 24,438 –39 (noting that “State and local licensing officials will occasionally have to issue licenses on less than perfect information”).

³⁵ See *Abramski*, 573 U.S. at 172 (noting that gun laws have been intended “principally to prevent guns from falling into the wrong hands.”).

³⁶ See, e.g., 18 U.S.C. § 922(t); 18 Pa.C.S. § 6111; N.J. Stat. Ann. § 2C:58-3(a)(3), (b); Cal. Penal Code §§ 28100 – 28110, 28150 –28180, 28200 –28255; Conn. Gen. Stat. §§ 29-33(c), 29-36l(f), 29-37a(e)-(j) Del. Code Ann. tit. 11, § 1448D(h); D.C. Code Ann. § 7-2502.02; Haw. Rev. Stat. Ann. §§ 134-2, 134-13; Me. Stat. 15 § 395; Md. Coon. Ann., Pub. Safety §§ 5-101*(t), 5-124, 5-204.1; N.Y. Gen. Bus. L. § 898; Mass. Gen. Laws ch. 140, §§ 129B, 131, 131F; Nev. Rev. Stat. Ann. § 202.2547; Or. Rev. Stat. §§ 166.435, 166.436; R.I. Gen. Laws §§ 11-47-35 – 11-47.35,2; Vt. Stat. Ann. tit. 13, § 4019; Va. Code Ann. §§ 18.2-308.2:2, 18.2-308.2:5; Rev. Code Wash. § 9.41.113.

A. ATF's Reinterpretation Of "Information Available To Such Official" Is Contrary To Law.

Congress did not authorize ATF to issue regulations that allow FFLs to transfer firearms pursuant to a state permit that does not meet the Brady Act's standards, but that is what it seeks to do now. By recognizing state permits even where the state permitting officials did not consider categories of relevant information based on effort, cost, or "means," and by classifying certain non-criminal justice repositories as categorically outside the "information available" for checks, the Proposed Rule impermissibly rewrites the conditions for lawful transfers.³⁷ The Proposed Rule thus is contrary to law, including 18 U.S.C. § 922(t)(3) and 18 U.S.C. § 926(a), and exceeds the limited rulemaking authority conferred on ATF by 18 U.S.C. § 926(a). It does so by unlawfully reducing the expectation on states that issue permits, when conducting their own background checks. Under the Brady Act, state authorities issuing such permits must consult available information to verify that a person is not prohibited from possessing a firearm.³⁸ Since Qualifying Alternative Permits are intended as substitutes for NICS checks, and since, as the NPRM acknowledges, ATF has often audited state procedures to ensure that they are comparably reliable to a NICS check,³⁹ state officials must exercise a level of diligence comparable to a NICS check when verifying the eligibility of an applicant. Courts have interpreted NICS Standard Operating Procedures as *requiring* that NICS examiners "*will contact*" state points of contact, the courts, and arresting agencies for information when NICS flags potential violations that would make a purchaser ineligible to purchase weapons.⁴⁰ This directive requires more effort than mere reliance on "readily accessible" information, the proposed new standard.

The Proposed Rule would effectively create a new, lower-tier state permit that allows FFLs to transfer firearms based on state permits issued without anyone actually verifying that the transferee is not a person prohibited from possessing a firearm. These new state permits may be issued simply based on "information that is readily accessible," rather than—as the Brady Act's text requires—a state official consulting all available information to verify that possession of a firearm by the applicant would not violate the law.⁴¹ In addition, because only states that utilize "criminal justice agencies" as permit-issuing authorities have direct access to NICS, states could structure their permitting regimes to designate a non-law-enforcement official who lacks access to NICS information as the official responsible for state permitting decisions. Then, those officials could issue permits based on whatever information happens to be "readily accessible" to them.⁴²

³⁷ 18 U.S.C. § 922(t)(3); 18 U.S.C. § 922(t)(3)(A). As discussed *infra*, subsection (t)(3)(C) contains the only explicit exception to when a firearm may be transferred without a NICS check or a Qualifying Alternative Permit.

³⁸ 18 U.S.C. § 922(t)(3)(A)(ii)

³⁹ See 18 U.S.C. § 922(t)(3)(A)(ii); 91 Fed. Reg. at 24,438.

⁴⁰ *Sanders v. United States*, 937 F.3d 316, 329–30 (4th Cir. 2019) (emphasis added).

⁴¹ 18 U.S.C. § 922(t)(3).

⁴² The Proposed Rule highlights the problems with this vague standard, noting that "many criminal justice records specific to misdemeanor assault convictions" (which under federal law would prohibit the person from having firearms) often are incomplete or would require additional research. 91 Fed. Reg. at 24,438. A permitting agency

The Proposed Rule is inconsistent with past ATF practice, the express goals of the Brady Act, as well as the plain meaning of the words of the statute. Start with the statutory text, which recognizes such state permits only if they are issued “after an authorized government official has verified that the information *available* to such official does not indicate that possession of a firearm by such other person would be in violation of law.”⁴³ Merriam-Webster defines “available” as “such as may be availed of: capable of use for the accomplishment of a purpose” or “that is accessible or may be obtained.”⁴⁴ Nothing in that definition suggests that “available” means only information which is easy to obtain. Something is “available” if one has the *capacity* to obtain it, not only if it can be obtained with minimal effort. For a state permit to be a Qualifying Alternative Permit, state officials must use the information that is “obtainable,” “capable of being made use of,” and “within [their] reach.”⁴⁵ That includes information that may not be “readily accessible” to the official, whether due to poor state record-keeping or because it exists only in physical form, or because state authorities have structured their licensing regime so that the authorized state official lacks access to relevant criminal history information. Inconvenience in obtaining information, on its own, does not mean that information is not available.

Statutory context also undermines ATF’s interpretation of 18 U.S.C. § 922(t)(3). The Brady Act provides two narrow exceptions to the requirement that FFLs either use the NICS system or rely on a Qualifying Alternative Permit before transferring a non-NFA firearm, and they are not easily met. Subsection 922(t)(3)(B) requires express approval from the Attorney General under section 5812 of the Internal Revenue Code of 1986.⁴⁶ Subsection 922(t)(3)(C) permits a transferor to apply to the Attorney General to certify that compliance with the requirements of NICS checks is impracticable because: “(i) the ratio of the number of law enforcement officers of the State. . . to the number of square miles of land area . . . does not exceed 0.0025; (ii) the business premises of the licensee. . . are extremely remote in relation to the chief law enforcement officer. . . ; and (iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.”⁴⁷ Thus, the Brady Act allows FFLs, in these narrowly prescribed circumstances, to transfer a firearm without a NICS check or a Qualifying Alternative Permit. Congress created these narrow exceptions to the requirement to rely on a NICS check or a Qualifying Alternative Permit. ATF cannot, by regulation, recognize a capacious exception to also allow firearms transfers pursuant to state permits that can be issued by a state official who does not conduct any background check or investigation beyond what is “readily accessible” to them.

reviewing an applicant with a domestic violence conviction (a disqualifying conviction under federal law) thus might determine that additional research to confirm the person’s eligibility is simply beyond the scope of “readily accessible” information and would require “extraordinary effort.”

⁴³ 18 U.S.C. § 922(t)(3)(A)(ii) (emphasis added).

⁴⁴ *Available*, WEBSTER’S THIRD INTERNATIONAL DICTIONARY (6th ed. 1993).

⁴⁵ *Id.*

⁴⁶ 18 U.S.C. § 922(t)(3)(B).

⁴⁷ 18 U.S.C. § 922(t)(3)(C)

III. The Proposed Rule is Arbitrary and Capricious.

The Proposed Rule is additionally arbitrary and capricious, including because ATF failed to reasonably explain shifts in interpretation and consider important aspects of the problem being addressed. As discussed *supra*, the Proposed Rule’s undefined, lower standard allowing state permitting authorities to rely on “readily accessible” information is contrary to the Brady Act’s statutory requirement to use the “information available.”⁴⁸ But this change also lacks a reasoned explanation for why state permitting authorities may ignore available, but not “readily accessible” sources of information based on an amorphous effort-and-expense framework. The Proposed Rule provide no facts to underly its decision to shift to requiring consideration only of “readily accessible” sources of information that do not come at “extraordinary effort,” nor does it justify ATF’s policy change of deferring to state permitting authorities.⁴⁹ This lack of clarity and definable standards leaves permitting authorities to their own devices to engage in as minimal effort as they may deem satisfactory, circumventing the purpose of the Brady Act. The Proposed Rule’s decision to allow state officials to simply rely upon whatever information is “otherwise available” and “readily accessible” is particularly arbitrary, as it provides no guidance to such officials about how to make permitting decisions, in contravention of the system established by the Brady Act.

Nor does the Proposed Rule adequately consider the implications and challenges of implementing its ill-defined standard across states with varying licensing regimes—thus fragmenting the uniform background check system established by the Brady Act. The terms “readily accessible” and “extraordinary effort, expense, or means” in particular are undefined and lack workable standards, inviting inconsistent application by state permitting officials, and FFLs.⁵⁰ The Proposed Rule does not specify objective criteria, thresholds, or factors to guide determinations, increasing the risk of uneven enforcement and erroneous approvals or denials.⁵¹ The vagueness is compounded by the absence of clear examples delineating what sources or retrieval steps fall inside or outside the standard, leaving regulated parties without fair notice of compliance obligations and exposing similarly situated applicants to disparate outcomes. Likewise, the Proposed Rule does not account for how its definition of these terms will affect search protocols, response times, dispute resolution, or state recordkeeping—additional aspects of the problem the agency must consider before finalizing a rule that redefines what constitutes “information available” for purposes of issuing state permits that can substitute for a NICS check.

In addition, the Proposed Rule is not reasonably explained.⁵² Because ATF has not provided a reasoned explanation for either its new “readily accessible” standard or its decision to

⁴⁸ 18 U.S.C. § 922(t)(3)(A)(ii)

⁴⁹ *See Fox*, 556 U.S. at 51516.

⁵⁰ 91 Fed. Reg. at 24,438.

⁵¹ *Id.*

⁵² *Ohio v. Envir. Prot. Agency*, 603 U.S. 279, 294 (2024) (staying an EPA rule that was not “reasonably explained”); *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42–43 (1983) (“[A]n agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change... The reviewing court should not

defer to states regarding their permitting systems, the current analysis cannot support the Proposed Rule. Here, ATF has failed to consider important public health and safety issues stemming from laxer permitting standards, and offers insufficient explanation and record support for the proposals. In other Proposed Rules, ATF acknowledges that these deregulatory actions could result in “greater” and “increased” risks to public safety, including “potential mass casualty events” and that the changes could make it more difficult to “track and stop violent offenders.”⁵³ However, ATF dismisses these major public health and safety issues as hypothetical, “minor,” or “minimal.”⁵⁴ But as recent history has shown, the potential impacts on public health and safety are not mere conjecture.⁵⁵ The Proposed Rule does not reasonably consider the possibility or likelihood of any of these potential impacts, nor does it discuss the potential for improper permits issued to prohibited individuals. Absent a reasoned assessment of these factors and evidence substantiating any asserted benefits, the Proposed Rule is arbitrary and capricious.⁵⁶

Indeed, the Proposed Rule risks inviting a flood of state firearms permits issued to (and in turn, firearms sold to) individuals who are prohibited from possessing firearms. For example, if a firearm purchaser was issued a state concealed-carry permit five years ago, but four years ago was convicted of a crime disqualifying them from firearms possession under state or federal law, that individual may still be able to obtain a state firearm permit under the Proposed Rule. A NICS background check is designed to capture the more recent conviction, whereas relying solely on the five-year-old state permit would not disqualify them from purchasing firearms today. Under the Proposed Rule, such state permits can qualify to exempt such a person’s purchase from a background check—regardless of whether the state permitting official actually consulted the criminal history records “available” to them at the time they issued the permit. Congress accepted the risk inherent in a five-year permit only because Section 922(t)(3)(A)(ii) conditions the permit alternative on a genuine, verification-backed issuance; the Proposed Rule dilutes that verification while leaving the five-year window in place. Simply, the Proposed Rule nowhere acknowledges the harm to public safety from this increased risk of wrongfully issued permits, much less justifies that harm.

The Proposed Rule’s lax standard for state permits that can serve as Qualifying Alternative Permits will also likely result in increased trafficking of crime guns, particularly

attempt itself to make up for such deficiencies: we may not supply a reasoned basis for the agency’s action that the agency itself has not given.”).

⁵³ See e.g., 91 Fed. Reg. at 24,539 (recognizing that a prohibited person could potentially obtain a firearm under the Proposed Rule modifying Form 4,473); 91 Fed. Reg. at 24,421 (noting that weapons traces that would be unsuccessful as a result of the Proposed Rule’s modification of record-keeping requirements would “delay or hinder federal, state, and local law enforcement efforts to track and stop violent offenders.”).

⁵⁴ *Id.*

⁵⁵ *Implementing the Bipartisan Safer Communities Act: One Year In*, Giffords (June 26, 2023) (describing how the Bipartisan Safer Communities Act “came on the heels of devastating mass shootings in Buffalo and Uvalde.”); *Beyond Bullet Wounds: Guns in the Hands of Domestic Abusers*, Brady United, 4, 20-26 (2021), <https://assets.bradyunited.org/production/images/Guns-Domestic-Violence.pdf?dm=1727289836> (noting that more than a quarter of all U.S. homicides involve domestic violence, and over half of these homicides involve firearms and the contributing impact of pre-BSCA loopholes in federal law).

⁵⁶ 5 U.S.C. § 706(2)(A)

of firearms sold in states in which FFLs do not use the NICS system and rely upon state permits issued based on whatever information is “readily accessible.” For example, almost half of crime guns found in New Jersey and traced from out-of-state come from states that allow FFLs to transfer firearms using state permits instead of NICS.⁵⁷

The problem is exacerbated by the Proposed Rule’s apparent reversal on state permit audits. ATF has previously audited states that purport to issue Qualifying Alternative Permits to ensure compliance with their obligation under 18 U.S.C. § 922(t)(3)(A)(ii) to verify that permits are not issued to persons prohibited from possessing firearms. Indeed, ATF has found some state practices insufficient to determine if a prospective transferee is a person prohibited from possessing a firearm. In some cases, ATF has withdrawn recognition of those states’ permits as Qualifying Alternative Permits in part because licensing officials in those states had issued permits to prohibited persons.⁵⁸ The Proposed Rule would seemingly abandon this practice. ATF would evidently no longer withdraw recognition of a state’s alternative permit upon determining that the state’s licensing officials had issued permits to prohibited persons,⁵⁹ thereby removing a powerful incentive for states to ensure rigor in their licensing processes. The Proposed Rule does not explain how this laissez-faire approach advances the goals of the Brady Act, instead simply stating that the Act does not “contemplate that state officials will be perfect in issuing licenses.”⁶⁰ The ATF cannot, through rulemaking, abdicate its responsibility under the Brady Act to ensure that state permitting authorities comport with Section 922(t)(3)(A)(ii).⁶¹

ATF likewise failed to consider the serious reliance interests engendered by its longstanding framework.⁶² For three decades, States have structured their firearms-licensing and enforcement systems—and FFLs have structured their transfer practices—around ATF’s audit-backed determinations of which state permits may lawfully substitute for a NICS check. The Proposed Rule nowhere acknowledges these reliance interests, much less weighs them against its asserted interest in reducing “confusion.”⁶³

⁵⁷ See *Firearms Trace Data: New Jersey – 2023*, ATF (December 2024) <https://www.atf.gov/firearms/report/firearms-trace-data/firearms-trace-data-new-jersey-2023>. Likewise, in Massachusetts, 65 percent of the crime guns recovered and traced to a source state in 2023 originated outside the Commonwealth, and more than one in six out-of-state crime guns are traceable to just a handful of states, each of which relies on state-issued permits instead of the NICS system. See *Firearms Trace Data: Massachusetts – 2023*, ATF, <https://www.atf.gov/firearms/report/firearms-trace-data/firearms-trace-data-massachusetts-2023> (last visited July 27, 2026); ATF, “Brady Permit Chart,” <https://www.atf.gov/rules-and-regulations/laws-alcohol-tobacco-firearms-and-explosives/gun-control-act/brady-law/brady-permit-chart> (last visited July 27, 2026).

⁵⁸ 91 Fed. Reg. at 24,438.

⁵⁹ 91 Fed. Reg. at 23,328.

⁶⁰ 91 Fed. Reg. at 24,438.

⁶¹ *Texas Gun Rights, Inc. v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 697 F.Supp. 3d 593, 599 (N.D. Tex. 2023) (finding that ATF failed to provide a detailed justification for their reversal of longstanding policy) (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

⁶² See *Sierra Club v. Costle*, 657 F.2d 298, 401–04 (D.C. Cir. 1981) (holding that agency decision-making ultimately must rest on “evidence in the record” and cannot depend on undisclosed communications that evade meaningful scrutiny).

⁶³ See 5 U.S.C. § 553(c).

Massachusetts, for example, permits no firearms license to issue unless the colonel of the state police “has certified that the information available indicates that issuing the permit, card, or license is not in violation of state or federal law” – a certification made only after fingerprint supported queries of “statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System” and an inquiry to the department of mental health.⁶⁴ Massachusetts’s experience refutes the premise that the verification Congress required entails “extraordinary effort”: states can, and do, route permitting decisions through officials with access to comprehensive state and national records. And because crime guns move freely across state lines, States that maintain rigorous licensing systems necessarily rely on ATF’s enforcement of Section 922(t)(3)’s verification standard against permits issued elsewhere.

Last, ATF’s failure to consider obvious, less harmful alternatives is an independent reason the Proposed Rule is arbitrary and capricious.⁶⁵ These include: retaining the current regulation and ATF’s existing oversight practice; defining “information available to such official” to require, at minimum, a NICS or equivalent check obtained by or on behalf of the permitting official;⁶⁶ replacing ATF’s audit practice with periodic compliance reviews that afford states notice and an opportunity to cure before recognition of their permits is withdrawn, as opposed to abandoning oversight altogether; requiring states seeking recognition of their permits to identify the record systems their officials consult, so that ATF, FFLs, and the public can assess compliance with Section 922(t)(3)(A)(ii); and delaying any effective date to allow states to adjust their permitting and enforcement systems.

In short, the Proposed Rule would enable firearms transfers to take place pursuant to ineffective state permitting systems that can incorrectly approve prohibited persons for firearms transfers. It risks suggesting to state permitting authorities that ATF no longer requires rigorous background checks. It invites a wave of wrongfully issued permits, which will mean firearms in the hands of those who should not have them. A state permitting official who does not check records stored at a courthouse because they deem them not “readily accessible,” may, under the Proposed Rule, issue a permit, even if the records would reveal the permittee had a disqualifying criminal conviction. The Proposed Rule not only permits this; it makes it more difficult for ATF to revoke approved status for state permitting programs that do not meet statutory requirements, declaring that erroneously issued permits are not evidence that a state’s permitting system fails to comply with federal law.⁶⁷

⁶⁴ See, e.g., *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 393–94 (D.C. Cir. 1973); *United States v. Nova Scotia Food Prods. Corp.*, 568 F.2d 240, 251–52 (2d Cir. 1977); *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236–40 (D.C. Cir. 2008).

⁶⁵ See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 46–51 (1983); *Regents*, 591 U.S. at 30–33 (agency action is arbitrary and capricious where the agency fails to consider obvious and reasonable alternatives within the scope of its authority).

⁶⁶ 91 Fed. Reg. at 24,438 (describing Florida’s arrangement, in which the Florida Department of Law Enforcement conducts the NICS check on behalf of the non-criminal-justice agency that issues permits).

⁶⁷ 91 Fed. Reg. at 24,439

IV. Procedural Defects Compound the Substantive Failures of the Proposed Rule.

The Proposed Rule suffers from independent procedural defects. The APA requires a transparent process that permits meaningful public participation, discloses the actual basis for agency action, and allows affected sovereigns and stakeholders to respond to the materials and assumptions that shaped the Proposed Rule. Here, the available record raises serious concerns that ATF failed to consult states despite obvious federalism implications and relied on undisclosed industry input. These are not technical defects. They go to the integrity of the rulemaking process and cannot be cured through post hoc explanations in a final rule.

A. ATF Failed to Consult with the States, as Required Under Executive Order 13132.

Executive Order 13132 defines “policies that have federalism implications” to include regulations and policy actions that have “direct effects on the States,” on the relationship between the federal government and the States, or on the distribution of power and responsibilities among levels of government.⁶⁸ Section 6(a) of that order requires every agency to maintain an accountable process to ensure “meaningful and timely input by State and local officials” in developing regulatory policies with federalism implications.⁶⁹ The Proposed Rule has direct effects on state and local law enforcement and public-safety systems.

ATF’s determination that the Proposed Rule does not warrant a federalism summary impact statement is inadequate and erroneous. Executive Order 13132’s federalism inquiry applies whenever the proposal has substantial direct effects on the states or on the federal-state allocation of public safety responsibility. ATF ignored that federalism process. The Proposed Rule does not identify any meaningful or timely consultation with the states, describe which state or local officials were consulted, summarize any concerns raised by those officials, or explain how ATF considered those concerns before issuing the proposal. Instead, the Proposed Rule erroneously presumes that no federalism consultation was required. The Proposed Rule therefore deprived states of both the consultation process to which they were entitled and the notice necessary to respond meaningfully to ATF’s federalism concerns.

B. ATF Has Not Disclosed the Extent of Outside Influence on the Proposed Rule.

ATF’s administrative record contains a direct and material tension with ATF’s public statements concerning the development of this Proposed Rule. In materials accompanying the rulemaking package, ATF states that “[n]one of these rules were drafted directly or indirectly by any member of the gun industry.”⁷⁰ Yet ATF’s and DOJ’s own public communications, including its press conference held with several industry organizations, describe a materially different process.

⁶⁸ Exec. Order No. 13,132, § 1(a), 64 Fed. Reg. at 43,255 (Aug. 10, 1999).

⁶⁹ *Id.* § 6(a), 64 Fed. Reg. at 43,257.

⁷⁰ ATF, *ATF Launches New Era of Reform: Questions and Answers* (2026), available at www.atf.gov/rules-and-regulations/atf-launches-new-era-reform/questions-and-answers.

At the public announcement of the rulemaking package, DOJ and ATF said the review leading to these Proposed Rules “included consideration of industry and expert feedback and concerns,”⁷¹ and ATF’s “New Era of Reform” materials characterize the proposed rules as part of “a landmark package of proposed and final rules” built on “partnership with the firearms industry,” “trust and collaboration,” and “working with federal firearms and explosives licensees as partners.”⁷² Acting Attorney General Blanche made clear that the Federal Government’s firearms policy would benefit the “gun industry” by moving it “forward a mile.”⁷³ These statements are not consistent with an administrative record that denies that industry directly or indirectly shaped the rules.

Industry representatives confirmed their substantive involvement in this rulemaking process. The National Shooting Sports Foundation, the firearms industry’s trade association, claimed that the package was “the result of months of NSSF working closely with the ATF and DOJ” to identify and revise regulations, and that package included priorities “NSSF has long championed.”⁷⁴ The American Suppressor Association stated that it had “worked closely with Robert Cekada” to ensure gun owners had “a seat at the table in shaping policy.”⁷⁵ The National Rifle Association described the package as reflecting its own recommendations, stating that it had submitted a memorandum to DOJ with “some 50 actions” the Executive Branch could take, that the administration had already acted consistently with “at least half” of those suggestions, and that the Department’s proposed rules “continued this momentum” by addressing matters requiring formal rulemaking.⁷⁶ Gun Owners of America also claimed credit for the package, stating that it had “fought the Department of Justice for rule changes by ATF,” that it “appeared at the Department of Justice for the signing of 34 new ATF Rules,” and that it had been “lobbying the Justice Department for months . . . hoping to change ATF policy.”⁷⁷

While informal rulemaking does not prohibit *ex parte* contacts, significant communications presenting new data or substantial argument must be reflected in the public record so affected parties may respond and reviewing courts may assess the basis for the

⁷¹ *Supra* note 2.

⁷² ATF, *ATF’s New Era of Reform* (May 12, 2026), <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform>.

⁷³ *Acting U.S. Attorney General Todd Blanche Outlines Sweeping Second Amendment Overhaul at Trump DOJ*, DEALERWIRE (Apr. 24, 2026), <https://www.thedealerwire.com/features/2026/04/acting-us-attorney-general-todd-blanche-outlines-sweeping-second-amendment-overhaul-at-trump-doj/>.

⁷⁴ *NSSF Welcomes ATF Landmark Rulemaking Package*, NSSF (Apr. 29, 2026), <https://www.nssf.org/articles/nssf-welcomes-atf-landmark-rulemaking-package/>; see also The Weekly Reload Podcast, “How ATF’s New Regulations Change the Gun Industry (Ft. NSSF’s Larry Keane),” published May 10, 2026, <https://thereload.com/podcast-how-atfs-new-regulations-change-the-gun-industry-ft-nssfs-larry-keane/> (Larry Keane, NSSF’s Senior Vice President and General Counsel, claimed that ATF reached out to NSSF “as they were working on the drafts to get perspective from the industry.”).

⁷⁵ *ASA Statement on Nomination of Robert Cekada for ATF Director*, Am. Suppressor Ass’n, (Nov. 17, 2025), <https://americansuppressorassociation.com/news/asa-statement-on-nomination-of-robert-cekada-for-atf-director>.

⁷⁶ *ATF Announces New Director, Historic Regulatory Overhaul*, Nat’l Rifle Ass’n, (Apr. 30, 2026), <https://www.nraila.org/articles/20260430/atf-announces-new-director-historic-regulatory-overhaul>.

⁷⁷ *Here’s What GOA Did for Your Gun Rights This Week*, Gun Owners of Am. (May 2, 2026), <https://www.gunowners.org/na040226/>.

agency’s decision.⁷⁸ An agency may not rely on material unavailable to commenters while denying them an opportunity to test, examine, and criticize the basis for agency action.⁷⁹ If ATF relied on industry-supplied information—including, but not limited to, burden estimates, factual assertions, legal memoranda, enforcement anecdotes, draft language, or policy recommendations—those materials formed part of the practical basis for the Proposed Rule and should have been placed in the record for the public to be able to meaningfully respond. The concern is heightened because the constituency involved is not a neutral technical advisor but the same regulated industry that stands to benefit directly from the proposed changes.

Nor can ATF cure the defect by making disclosures in the Final Rule. Commenters cannot meaningfully respond to arguments, assumptions, data, or proposed language that were never disclosed during the comment period. Once the comment period closes, the opportunity to test those materials has already been lost.⁸⁰

C. ATF Has Not Complied with Executive Order 12866.

Executive Order 12866 requires an agency to assess both the costs and the benefits of a regulatory action and to proceed only on a reasoned determination that the benefits justify the costs. ATF’s analysis is one-sided. ATF deemed this Proposed Rule not “significant,” asserted that its changes “do not impose any costs or quantitative benefits,” and thereby avoided both OMB review and any assessment of the rule’s public-safety costs.⁸¹ But a rule that excuses permitting officials from reviewing available criminal-history information, and that withdraws federal oversight of state permitting systems, is not costless: forgone background checks, wrongly issued permits, and firearms transferred to prohibited persons are costs—borne by the States above all—that ATF never acknowledged, estimated, or weighed. An agency acts arbitrarily when it credits speculative or comparatively modest private savings while declining even to estimate the harms for public safety. That defect is not confined to one rule; it runs through the package, and it is compounded by ATF’s refusal to analyze the rules’ cumulative effect.

* * *

The Proposed Rule increases the likelihood of unlawful gun transfers by unlawfully lowering the standards required by the Brady Act for ensuring that dangerous persons who are prohibited by law from obtaining firearms do not obtain firearms. It creates new avenues

⁷⁸ See *Sierra Club v. Costle*, 657 F.2d 298, 401-04 (D.C. Cir. 1981) (holding that agency decision-making ultimately must rest on “evidence in the record” and cannot depend on undisclosed communications that evade meaningful scrutiny).

⁷⁹ See, e.g., *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 393–94 (D.C. Cir. 1973) (holding “it is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, [in] critical degree, is known only to the agency.”); *United States v. Nova Scotia Food Prods. Corp.*, 568 F.2d 240, 251–52 (2d Cir. 1977) (holding that the “most critical factual material” relied upon by an agency must be disclosed so interested parties may “test, examine, and criticize” the agency’s rationale); *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236–40 (D.C. Cir. 2008) (vacating a rule where the agency withheld portions of studies underlying its proposal, emphasizing that “an agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.”).

⁸⁰ See 5 U.S.C. § 553(c).

⁸¹ 91 Fed. Reg. at 24,439.

August 4, 2026

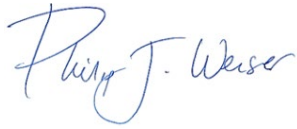
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by which to avoid NICS background checks or similar checks, subverting the central aims of the Brady Act. ATF should withdraw the Proposed Rule.

Sincerely,



Jennifer Davenport
Attorney General of New Jersey



Philip J. Weiser
Attorney General of Colorado



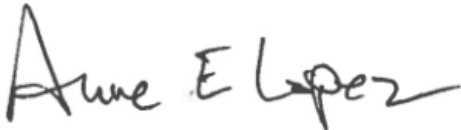
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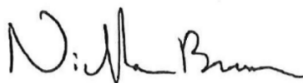
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August 4, 2026

Via Federal Rulemaking Portal (Regulations.gov)

The Honorable Todd Blanche
Acting Attorney General of the United States

Robert Cekada
Director of the Bureau of Alcohol, Tobacco,
Firearms and Explosives

c/o: ATF Rulemaking Comments
Mail Stop 6N-518, Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

ATTN: RIN 1140-AA95

**Re: Comments to Notice of Proposed Rulemaking, “Firearm Records Retention Periods,”
91 Fed. Reg. 24413 (May 6, 2026); Docket No. ATF–2026–0003; ATF 2025R–08P**

Dear Acting Attorney General Blanche and Director Cekada:

We, the Attorneys General of Massachusetts, Illinois, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawai’i, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington (“the States”) write in opposition to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF” or “Bureau”) proposed rule entitled “Firearm Records Retention Periods,” published in the Federal Register at 91 Fed. Reg. 24413 on May 6, 2026 (“Proposed Rule” or “NPRM”). We urge the Bureau to withdraw the Proposed Rule, or at least the portions challenged below, and retain the current regulations at 27 C.F.R. §§ 478.127 and 478.129.

The Proposed Rule is one of nearly three dozen regulatory changes through which ATF would fundamentally overhaul the firearm regulatory scheme. It would result in the destruction of firearm transfer records that law enforcement relies on to trace guns recovered from homicides, mass shootings, and other crime scenes. Those traces depend on records held by active federal

firearms licensees (“FFLs”) or transferred to ATF when a dealer closes. Once destroyed, the record cannot be recovered or recreated, and the investigative lead is permanently lost. Yet, ATF proposes to destroy an untold number of records held by active FFLs and roughly 500 million images that the Bureau maintains, making it harder to solve gun crimes, identify and prosecute traffickers and straw purchasers, enforce other federal and state firearms laws, and protect communities from gun violence.

The States have significant interests that would be harmed by the destruction of these records. The States regulate firearm sales and eligibility to purchase or possess,¹ inspect dealers and their records² and, together with their municipalities, rely on these records to investigate and prosecute violent crimes.³ The Proposed Rule would irreversibly undermine each of these core functions.

I. The Proposed Rule Would Destroy Records Used for Crime Gun Tracing.

The Gun Control Act of 1968 (“GCA”) requires FFLs to maintain acquisition and disposition (“A&D”) records at their place of business for “‘such period’ and in such form as prescribed by regulation.”⁴ The GCA and implementing regulation also require FFLs who discontinue their business to send their business records, like A&D records and Forms 4473 records, to ATF’s Out-Of-Business (“OOB”) Records Center within 30 days.⁵ Since the institution of that center, the United States has kept OOB records indefinitely.⁶

The current rule, promulgated in 2022 (“2022 Final Rule”), provides for indefinite record retention periods for these A&D records, and Forms 4473.⁷ In the 2022 Final Rule, ATF addressed the same core question presented here—whether aged firearm transaction records retain law enforcement value—ATF reached the opposite conclusion it now does.⁸ Unlike this NPRM, the 2022 Final Rule included a cost-benefit analysis. It concluded that the public safety benefits of permanently retaining FFLs’ A&D records and Forms 4473 outweighed the costs.⁹

Law enforcement agencies rely on these retained records to solve crimes and enforce the law, and they are particularly essential to ATF’s crime gun tracing system. Its web-based eTrace system, which provides law enforcement with information on firearms recovered from crime scenes, relies upon information found in these records retained by the last known seller, the FFL.¹⁰ The Form 4473 identifies the firearm’s last known purchaser, while A&D records establish its chain of custody.

¹ See, e.g., Mass. Gen. Laws ch. 140, §§ 121F, 122, 123, 128A, 129B, 131.

² See e.g., Ill., 430 ILCS 65/1.1; 430 ILCS 68; Mass. Gen. Laws ch. 140, § 123(h), (n).

³ See, e.g., Ill., 720 ILCS 5/24-1; Mass. Gen. Laws ch. 140, §§ 123(h), 131Q(a)–(c).

⁴ NPRM, 91 Fed. Reg. 24413, 24414 (May 6, 2026); see also 18 U.S.C. § 923(g)(1)(A).

⁵ See 18 U.S.C. § 923(g)(4); see also 27 C.F.R. § 478.127.

⁶ See generally 27 C.F.R. § 478.127. ATF has refused to share OOB records with civil litigants, making the OOB repository essentially a black box, even for civil enforcement actions.

⁷ See 27 C.F.R. § 478.129.

⁸ See 2022 Final Rule, 87 Fed. Reg. 24652, 24654 (Apr. 26, 2022).

⁹ See *id.* at 24724.

¹⁰ See *Fact Sheet - eTrace: Internet-Based Firearms Tracing and Analysis*, ATF, <https://www.atf.gov/resource-center/fact-sheet/etrace-internet-based-firearms-tracing-and-analysis> (last updated June 10, 2026).

That information and those forms often are essential to prosecution of firearm-related offenses, including two new federal offenses—straw purchasing of firearms, 18 U.S.C. § 932, and trafficking in firearms, 18 U.S.C. § 933—passed in 2022 through the Bipartisan Safer Communities Act (“BSCA”). Congress later directed ATF to further expand—not contract—the crime gun intelligence and tracing infrastructure on which those new enforcement tools depend. The NPRM would do the opposite, destroying the records needed to prosecute the very offenses Congress codified in 2022. Specifically, it would allow active FFLs and the ATF to destroy records more than 20 or 30 years old, eliminating about 500 million images of OOB records—about one-third of the federal government’s retained records—and an unknown number of records retained by active FFLs.¹¹

II. The Proposed Rule Would Harm Public Safety and the States.

Destroying tens of thousands of records that ATF concedes support crime gun traces would irreparably harm the States’ efforts to protect residents from violent crime.

A. ATF Concedes the Rule Would Harm Public Safety.

ATF admits the NPRM may harm public safety materially: “[t]he primary source of any potential risk would be the possibility that ATF is unable to complete a small portion of firearm trace requests from federal, state, and local law enforcement” for those firearms records 20 or 30 years old, and admits that some of these may be high-profile “urgent traces.”¹² ATF defines an “urgent” trace as one used when the criminal “violations are significant and circumstances warrant or require that the firearm be traced without undue delay[.]”¹³ including “mass shootings, homicides, bank robberies, and other immediate threats to officer and public safety.”¹⁴

In 2022, ATF quantified the public-safety consequences of destroying the same categories of records at issue. The Bureau reported that over a 12-year period, approximately 16,324 traces, an average of 1,360 per year, could not be completed if records older than 20 years were destroyed.¹⁵ Among the traces that would fail without older records were: 182 urgent traces, 1,013 homicide or attempted-homicide traces, and 4,237 violent crime traces.¹⁶ The Bureau reported that criminal prosecutions involving firearms more than 20 years old averaged approximately 8,310 cases per year from 2016 to 2020, and estimated that permanent retention of the records at issue

¹¹ See ATF, National Firearms Commerce and Trafficking Assessment (NFCTA) Vol. IV, Part III, at 1 & Table CGT-01 (Jan. 2025) (“Of the 1,276,796 trace requests submitted to the NTC from 2022 to 2023, 46% were completed using OOB records”; OOB records are “a critical resource in completing traces for law enforcement.”).

¹² NPRM, 91 Fed. Reg. at 24420.

¹³ See ATF, National Tracing Center (NTC) Trace Request, ATF Form 3312.1 at 2 (Rev. Oct. 2025), *available at* <https://www.atf.gov/media/22586/download>.

¹⁴ See NFCTA, Vol. II, Part III, at 1 (Mar. 27, 2024), *available at* <https://www.atf.gov/media/15426/download>.

¹⁵ See ATF, Regulatory Impact Analysis and Final Regulatory Flexibility Analysis — Final Rule 2021R-05F, “Definition of ‘Frame or Receiver’ and Identification of Firearms” at 107 (Apr. 2022), *available at* <https://www.atf.gov/media/19201/download>.

¹⁶ *Id.*

here would produce an average of 27 additional prosecutions each year.¹⁷ For state and local police, a failed trace is not a “small” problem: it can mean losing the only lead connecting a recovered crime gun to a purchaser, dealer, trafficking route, or criminal network.

More recently, ATF’s National Firearms Commerce and Trafficking Assessment (“NFCTA”) confirmed the long tail of crime guns requiring records more than 20 years old.¹⁸ ATF calculated the time to crime (“TTC”) for firearms traced to a purchaser between 2017 and 2021.¹⁹ That analysis showed that 12.9 percent of traced crime guns had a TTC greater than 20 years. Put differently, more than 190,000 firearms were recovered in criminal investigations 20 years or more after their initial sale.²⁰ According to ATF’s own distribution, firearms with a TTC greater than 20 years were the second-largest cohort of all traced crime guns—behind only firearms recovered less than one year after purchase.²¹ The NPRM’s reliance on a short *median* TTC therefore misses the significant utility of the older records.

B. The NPRM Ignores the Reliance of States and Local Law Enforcement.

ATF concedes that traces made unsuccessful by the rule “could delay or hinder federal, state, and local law enforcement efforts to track and stop violent offenders.”²² ATF has long encouraged state and local law enforcement to use crime gun tracing as a core investigative tool, and states have invested resources in response.²³ ATF’s National Tracing Center (“NTC”)’s “core mission” is conducting crime gun tracing and providing investigative leads for “international, federal, state, local, territorial, and tribal law enforcement agencies.”²⁴ The NPRM would harm the States and localities by authorizing destruction of records that make tracing work.

In recent years, many States, including Massachusetts, and Illinois, have passed laws requiring firearms involved in crimes or suicides to be traced through ATF’s system.²⁵ Yet, just as States are requiring agencies to build their investigative practices around ATF’s tracing,²⁶ ATF proposes to make that infrastructure materially less effective by authorizing mass destruction of

¹⁷ ATF, Regulatory Impact Analysis and Final Regulatory Flexibility Analysis – Final Rule 2021R-05F, “Definition of ‘Frame or Receiver’ and Identification of Firearms” at 107–09 & Table 7.9 (Apr. 2022), *available at* <https://www.atf.gov/media/19201/download>.

¹⁸ See NFCTA Vol II, Part III: *Crime Guns Recovered and Traced Within the United States and its Territories* at 23 (Mar. 27, 2024), *available at* <https://www.atf.gov/media/15426/download>.

¹⁹ *Id.*

²⁰ See *id.* at 23–24 & Figure IFT-02.

²¹ See *id.*

²² NPRM, 91 Fed. Reg. at 24421.

²³ In February 1999, ATF stated that its objective was to improve the infrastructure for “comprehensive tracing” and to “establish electronic tracing support for all law enforcement agencies with significant numbers of crime gun recoveries.” ATF, Update: Comprehensive Community Crime Gun Tracing, at 16–17 (Feb. 16, 1999), *available at* <https://www.nycourts.gov/reporter/webdocs/update1.pdf>.

²⁴ NFCTA Vol. II, Part II, at 2.

²⁵ See, e.g., Mass., M.G.L. c. 140, § 131Q(a)–(b); Ill., Pub. Act 104-30, § 5 (eff. July 28, 2025) (amending 720 ILCS 5/2-13, 24-8).

²⁶ States that accepted ATF’s invitation to adopt comprehensive crime gun tracing would be disproportionately harmed. In 2023 alone, ATF traced 22,973 crime guns recovered in Illinois and 3,487 recovered in Massachusetts. See ATF, *Firearms Trace Data: Illinois—2023* (Dec. 2024), <https://www.atf.gov/firearms/report/firearms-trace-data/firearms-trace-data-illinois-2023>; ATF, *Firearms Trace Data: Massachusetts—2023* (Dec. 2024), <https://www.atf.gov/firearms/report/firearms-trace-data/firearms-trace-data-massachusetts-2023>.

these records needed to complete traces.²⁷ This reliance problem is especially acute for OOB records: when an FFL closes without a successor, no licensee remains to query, and the OOB record is often the only remaining path from a recovered crime gun to the first retail purchaser. Federal law recognizes that reality by requiring discontinued licensees to deliver their records to ATF within 30 days, while ATF’s regulations direct them to send their records to NTC’s OOB Center.²⁸ ATF has historically retained those records indefinitely;²⁹ the NPRM would abandon that practice and permanently sever the trace path.

Although ATF admits the Proposed Rule could delay or hinder law enforcement investigations,³⁰ it fails to assess the reliance interests and resulting harm to state and local traces, State crime gun intelligence programs, police departments, district attorneys, or state attorneys general. That harm is irreversible: a reviewing court can vacate a rule, but it cannot recreate an OOB image, A&D record, or a Form 4473 once destroyed.

III. The Proposed Rule is Arbitrary and Capricious in Violation of the APA.

The Proposed Rule failed to provide reasoned decision-making in violation of the APA. Specifically, it is arbitrary and capricious because it: (1) is an unexplained reversal of recent, considered policy, (2) runs directly counter to the evidence before the agency, and (3) failed to consider an important aspect of the problem.

A. ATF Recently Reached the Opposite Conclusion on the Same Core Facts, and the NPRM Offers No Reasoned Explanation for Its Reversal.

An agency changing position must “display awareness that it is changing position” and “show that there are good reasons for the new policy.”³¹ In 2022, ATF concluded that older firearm records provide investigative leads “no matter how long ago,” rejected burden and privacy objections to permanent retention, and found that destroyed records hinder investigations, inspections, and prosecutions. This NPRM reaches the opposite conclusion without meaningfully addressing those findings, explaining the reversal, or considering state and local law enforcement’s reliance on ATF tracing.³²

²⁷ If the NPRM on NFA firearm tracing becomes final, the data stored by FFLs will only become more important, as they will become the first stop for law enforcement seeking to trace what might be an NFA firearm. *See* Allowing Makers to Adopt Certain Markings for National Firearms Act Firearms NPRM, 91 Fed. Reg. 24466 (May 6, 2026). That FFL data might be the only hint that a separate search should be requested and run in the NFA database, the NFRTR. Destroying FFL records can sever the link necessary to reach an NFA firearm’s history.

²⁸ *See* 18 U.S.C. § 923(g)(4); 27 C.F.R. § 478.127.

²⁹ *See generally*, 27 C.F.R. § 478.127; *see also* U.S. GAO, GAO-16-552, *Firearms Data: ATF Did Not Always Comply with the Appropriations Act Restriction and Should Better Adhere to Its Policies* 15 (June 2016), available at <https://www.gao.gov/assets/gao-16-552.pdf>.

³⁰ *See* NPRM, 91 Fed. Reg. at 24421.

³¹ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

³² That failure violates *State Farm*’s reasoned-explanation requirement, 463 U.S. at 42-43, *Encino Motorcars*’ prohibition on unexplained inconsistency, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016), and *Regents*’ requirement to consider reliance interests and obvious alternatives, *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–33 (2020).

First, ATF already rejected the very staleness and burden objections the NPRM now invokes, explaining that a fixed record-retention period “would not align with the shelf life of most firearms” which can circulate “for many decades or even beyond 100 years,”³³ and would prevent successful traces of “older firearms that are used in the commission of a crime.”³⁴ ATF also rejected the contention that indefinite retention was “unreasonably burdensome” given technological advances,³⁵ and concluded that destroying records hinders “administrative inspections, criminal investigations, and prosecutions” because those records remain necessary “to combat criminal activities.”³⁶ The NPRM does not recognize or confront those findings.

Second, ATF previously—and repeatedly—rejected the privacy and registry concerns it now invokes. It concluded that dealer recordkeeping neither violates constitutional privacy interests nor “in no way establishes a registry of firearms,” explaining that records remain with licensees until they go out of business.³⁷ ATF likewise rejected the claim that extended retention creates an unlawful firearms registry. It explained that FFL records belong to and remain with licensees, entering ATF’s custody only when an FFL closes so crime gun tracing can continue,³⁸ and, even when in ATF custody, those OOB records cannot be searched by name or other personal identifiers, are stored only as non-searchable images, and comply with longstanding statutory restrictions³⁹—as confirmed by the Government Accountability Office.⁴⁰ Those prior findings undermine, rather than support, ATF’s current privacy rationale, and its failure to explain its reversal is independently arbitrary and capricious.⁴¹

Third, ATF now proposes an alternative it expressly rejected just four years ago, without acknowledging its prior analysis or explaining why its reversal. When ATF issued the 2022 Final Rule, it prepared a Regulatory Impact Analysis (“RIA”), examining the costs, benefits, alternatives, and regulatory consequences of indefinite retention.⁴² The RIA addressed public comments, the need for retention, the affected population, retention’s costs and benefits, and concluded that permanent retention was warranted.⁴³ The NPRM now reaches the opposite conclusion without addressing, much less performing, comparable work, for example the RIA:

³³ 2022 Final Rule, 87 Fed. Reg. at 24725.

³⁴ *Id.*

³⁵ *See id.* at 24712.

³⁶ *Id.*

³⁷ *Id.* at 24677–78.

³⁸ *Id.* at 24690.

³⁹ *Id.* at 24690 & n.113; NPRM, 91 Fed. Reg. at 24415.

⁴⁰ 2022 Final Rule, 87 Fed. Reg. at 24690 & n.113.

⁴¹ ATF’s Director has confirmed the same points—including after this NPRM was published—telling the Senate that “ATF does not have an illegal firearm registry” and that OOB records are “not organized as a comprehensive registry of firearms or firearm owners,” and testifying to the House that ATF has no searchable gun database, that OOB records are “completely separate from every active federal firearms licensee,” and that ATF “do[es]n’t have access” to active dealers’ records. *See* Robert Cekada, Responses to Questions for the Record, Senate Judiciary Committee, at 3–4 (Feb. 4, 2026); ATF Director Testifies on Firearms Policy and Second Amendment Protections, C-SPAN, at approx. 20:15, 31:00, 36:08–39:00 (May 14, 2026). The Bureau cannot tell Congress these records are lawful tracing tools while telling the public they are a privacy problem requiring destruction.

⁴² *See* ATF, Regulatory Impact Analysis and Final Regulatory Flexibility Analysis — Final Rule 2021R-05F, “Definition of ‘Frame or Receiver’ and Identification of Firearms” (Apr. 2022), *available at* <https://www.atf.gov/media/19201/download>.

⁴³ *See id.* at 89-111.

- Identified the affected population with precision: ATF estimated that only 745 FFLs would be affected by increasing the record-retention period beyond 20 years,⁴⁴ reported that only 0.76 percent of FFLs involved in a trace had destroyed records over 20 years old,⁴⁵ and analyzed the actual number of FFLs that had shipped boxes of records more than 20 years old, the boxes shipped, and the older records involved.⁴⁶ The current NPRM instead relies on broad and inconsistent FFL counts—128,960 at one point, 79,378 at another—and reaches only the speculative conclusion that “cost savings are thus difficult to quantify precisely” and that any industry benefit is of “unknown magnitude and number of beneficiaries.”⁴⁷
- Analyzed electronic storage pricing and concluded the “total cost” of increasing record retention from 20 years to permanent was \$228,780 a year,⁴⁸ that “FFLs enjoy a net savings over time because they no longer need to print and maintain paper records,”⁴⁹ and that industry as a whole would realize a total net savings over time after implementation of the permanent retention period.⁵⁰ The cost question was measurable in 2022, and the NPRM does not explain why the same agency cannot measure it now.
- Determined the marginal cost of retaining older records is offset, at least in substantial part, by savings.⁵¹ That finding matters even more now that the NPRM acknowledges the 2022 rule’s electronic and off-site storage accommodations make it less likely that the proposed rollback would let licensees recover “sunk costs.”⁵²
- Quantified the public safety benefits of permanent retention: an average of 132,088 traces per year involving firearms more than 20 years old (2010–2021), and approximately 8,310 successful prosecutions per year involving such firearms (2016–2020).⁵³ ATF further provided qualitative evidence about the crimes associated with unsuccessful traces, reporting that “1,013 were related to a homicide, and 4,237 were related to ‘Violent Crime,’” and estimated that permanent retention would likely produce an average of 27 additional criminal prosecutions every year.⁵⁴ The NPRM never shows that those benefits have diminished, much less disappeared.

⁴⁴ See *id.* at 94-96 (Section 7.3 Population for Record Retention).

⁴⁵ See *id.* at 95 (Table 7.1).

⁴⁶ See *id.* at 96-97 (Table 7.2, showing that between 2016 and 2021 only 284 FFLs had shipped ATF records over 20 years old and on average they only sent 8 boxes of records).

⁴⁷ NPRM, 91 Fed. Reg. at 24420.

⁴⁸ RIA at 100 & Table 7.5.

⁴⁹ See *id.* at 105 & Table 7.7.

⁵⁰ See *id.* at 106 & Table 7.8.

⁵¹ See *id.* at Tables 7.5 & 7.7.

⁵² See NPRM, 91 Fed. Reg. at 24419–20.

⁵³ See RIA at 107-08 & Table 7.9.

⁵⁴ See *id.* at 107-09.

- Expressly rejected the middle-ground approach ATF now proposes—“Record Retention Longer than 20 Years, but Less than Indefinite”⁵⁵—concluding that, because firearms can be in circulation for 100 years or more, “a specific year record retention term fails to track the shelf life of firearms that may last a significant number of years. When records are destroyed, ATF cannot successfully trace these firearms that may have been used in the commission of a crime.”⁵⁶

B. The NPRM Cannot Be Finalized on This Record, Where the Data Provided and Otherwise Available Contradicts the Rule Change.

The Proposed Rule relies upon arguments contradicted by the evidence contained in the NPRM as well as flawed data analysis.

First, the NPRM’s own trace data shows that older records remain essential to tens of thousands of successful traces each year. For example, Table 4 (24,420)⁵⁷ shows that, between FY 2015 and FY 2024, ATF completed 531,520 traces that required records older than 20 years to identify a purchaser.⁵⁸ Had the proposed 20-year cutoff been in place, those investigations would have lost the record needed to identify the first retail purchaser; not because the lead never existed, but solely because ATF authorized the destruction of key evidence. The single year picture is equally stark. In fiscal year 2024, ATF’s NTC used records older than 20 years to complete 49,920 successful crime gun traces; records older than 25 years to complete 39,229 successful traces; and records older than 30 years to complete 29,377 successful traces.⁵⁹

ATF’s time-series data also refutes the premise that older records lose utility on any predictable timetable. ATF acknowledges that “in 2024 more traces involved firearms between 30 and 35 years old than those aged 25 to 30 years.”⁶⁰ For the five consecutive prior years—2019 through 2023—records aged 25 to 30 years generated more crime gun traces than records aged 20 to 25 years.⁶¹ These are not anomalies but repeated refutations of the NPRM’s central premise that older records predictably lose utility with age, the primary justification relied on here.

Additionally, the NPRM obscures the growing use of older records by focusing on their declining percentage of completed traces rather than their increasing absolute use.⁶² Although the

⁵⁵ See RIA at 120-21 (Section 10.7).

⁵⁶ *Id.* The record has only grown stronger since 2022, which makes ATF’s failure to update its prior analysis especially telling. Records more than 30 years old supported 23,135 successful traces in FY 2015 but 29,377 in FY 2024—an increase of nearly 27 percent—while the claimed savings from destruction remain speculative. Rather than update the 2022 analysis to test whether reversal is justified, the NPRM simply bypasses it.

⁵⁷ ATF’s NPRM erroneously identifies two Table 4s—one on page 24416 (“Table 4—FY 2024 and FY 2025”), the other on page 24420 (“Table 4—Age of Firearm Records Required to Identify a Purchaser”). To avoid confusion, this comment letter cites the table on page 24416 as “Table 4 (24,416)” and the table on page 24420 as “Table 4 (24,420).”

⁵⁸ NPRM, 91 Fed. Reg. at 24420.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See *id.*

⁶² ATF’s account of NTC’s trace volume growth is, itself, unreliable. The NPRM fails to reconcile materially inconsistent ATF trace volume figures. The NPRM states that, in FY 2024, “NTC conducted 614,995 traces[.]” NPRM, 91 Fed. Reg. at 24415. But ATF told Congress in its FY 2025 budget submission that “NTC is currently in excess of 680,000 trace requests in FY 2024[.]” ATF, *FY 2025 Congressional Budget Submission: Salaries and*

overall number of successful traces more than doubled—from 218,806 in FY 2015 to 464,325 in FY 2024⁶³—the number requiring records more than 30 years old also increased, from 23,135 to 29,377 annually.⁶⁴ That is more than 6,200 additional successful crime gun traces each year relying on records the NPRM would permit to be destroyed.⁶⁵

Although the NPRM claims that the use of OOB records has “decreased steadily,” the raw data provided shows the exact opposite. For 2011, ATF reports 41,652 OOB traces using records more than 20 years old.⁶⁶ By 2024, that number had increased to 48,319.⁶⁷ Based on ATF’s data, the *share* of OOB traces involving records over 20 years old declined only because the overall OOB trace-universe expanded dramatically during the same period. The universe of OOB trace records has more than doubled, increasing by approximately 138 percent from 2011 to 2025. Against that much larger universe, even a smaller share still represents a greater (and increasing) number of traces that depend on older OOB records.

Second, the Proposed Rule’s trace data presentation is materially unclear because ATF uses multiple trace totals without explaining why those numbers differ.⁶⁸ The data presentation for fiscal year 2024 illustrates the problem. ATF states that “NTC conducted 614,995 traces” that year.⁶⁹ But Table 5 reports only 464,325 traces for 2024—a 150,670-trace gap.⁷⁰ ATF does not clearly explain the distinctions in a way that permits meaningful public comment.

The NPRM also minimizes trace failures. It reports that “only” 0.34, 0.31, and 0.26 percent of traces in fiscal years 2014, 2020, and 2021 were closed because dealers had destroyed records more than 20 years old, but calculates those percentages against all traces, including hundreds of

Expenses, at 3 (Feb. 2024), <https://www.atf.gov/media/19231/download>. ATF may contend those figures reflect different metrics (e.g., traces “conducted,” trace requests “received,” or trace requests “processed”) but the NPRM does not say so.

⁶³ NPRM, 91 Fed. Reg. at 24420.

⁶⁴ *Id.*

⁶⁵ The NPRM’s harm figures also understate the future universe of affected traces. ATF acknowledges that its trace data are representative only of jurisdictions with comprehensive tracing policies, *see* ATF, NFCTA: Firearms Trafficking Investigations – Volume 3 webpage at “Data Limitations” Section (last updated Apr. 6, 2026), *available at* <https://www.atf.gov/firearms/national-firearms-commerce-and-trafficking-assessment-nfcta-firearms-trafficking-investigations-volume-three>, so as more agencies adopt comprehensive tracing — as ATF itself recommends — the absolute number of traces dependent on older records will grow. The NPRM treats the present trace universe as a fixed ceiling; ATF’s own data make clear it is the floor.

⁶⁶ NPRM, 91 Fed. Reg. at 24419.

⁶⁷ *Id.*

⁶⁸ The NPRM uses, without distinguishing among them, “trace” in at least five different ways. *See, e.g.*, NPRM, 91 Fed. Reg. at 24415 (“traces”), 24420 (“trace requests”), 24416 (“completed traces”), 24420 (“successful crime gun traces”), and 24415 (“completed traces identified a purchaser”). The NPRM defines none of them. Reasoned decision-making requires the Bureau at least to identify what its data measure, particularly when its data are being used to justify the destruction of irreplaceable investigative records.

⁶⁹ *Id.* at 24415.

⁷⁰ *Id.* at 24420.

thousands that never required older records.⁷¹ Among traces that did require such records, the right comparator, failure rates were roughly six to eleven times higher.⁷²

Third, the Proposed Rule contains materially different counts of the active FFL population, an inconsistency that undermines the reliability of its cost-benefit analysis.⁷³ But the relevant population is those issued licenses more than 20 years ago, which are a small subset of active licensees,⁷⁴ meaning the overwhelming majority lack the costs invoked to justify the rule change.

Finally, ATF obscures the public safety consequences by treating all failed traces as interchangeable, even though a failed homicide trace is far more consequential than one involving a lower-level offense. ATF could distinguish the cases using the National Crime Information Center crime codes included with every trace request,⁷⁵ but it does not do so.

C. The NPRM Failed to Consider Less Destructive Alternatives.

An agency reversing course must consider “the alternatives within the ambit of the existing policy.”⁷⁶ ATF only considered keeping the current indefinite retention period; a 20-year period; and a 30-year period.⁷⁷ The agency failed to consider other possible alternatives, such as reducing FFL retention obligations, while preserving the OOB records indefinitely;⁷⁸ allowing FFLs to transfer older records to ATF or designating a federal repository once they reach a defined age; or grandfathering all existing records from destruction, while applying any new retention period only prospectively.⁷⁹

If ATF insists on a finite retention period, it should derive that period from data. A data-calibrated alternative would require ATF to ask the question the NPRM avoids: at what point, if ever, are records insufficiently useful to justify retention? ATF could have evaluated a period preserving a defined share of historically successful traces, keyed to the time-to-crime distribution by impacted State or reflecting firearms’ multi-decade service life. It did none of that. The 20- and 30-year cutoffs are round numbers, not reasoned conclusions.

⁷¹ *Id.* at 24416.

⁷² Compare NPRM, 91 Fed. Reg. at 24416 (0.34%, 0.31%, 0.26%), with *id.* Tables 2 & 6 (1,175 of 56,620 traces requiring over-20-year records in FY 2014; 1,463 of 51,030 in FY 2020; 1,349 of 47,040 in FY 2021 — failure rates of approximately 2.08%, 2.87%, and 2.87%, multiples of roughly 6.1, 9.2, and 11.0 over the NPRM’s all-traces rates).

⁷³ Compare NPRM, 91 Fed. Reg. at 24415, with *id.* at 24419.

⁷⁴ *Id.* at 24415.

⁷⁵ See ATF Form 3312.1, *NTC Trace Request*, OMB No. 1140-004.

⁷⁶ *Regents*, 591 U.S. at 30.

⁷⁷ The records in ATF’s custody are also subject to the Federal Records Act, which provides the exclusive procedures for disposing of federal records. Records may be destroyed only pursuant to a disposition schedule approved by the Archivist of the United States after the Archivist determines they lack sufficient administrative, legal, research, or other value to warrant continued preservation and provides notice and an opportunity for public comment. See 44 U.S.C. §§ 3303a, 3314; 36 C.F.R. § 1226.24(a); cf. *Am. Friends Serv. Comm. v. Webster*, 720 F.2d 29, 41-44 (D.C. Cir. 1983) (holding that appraisal of law enforcement records for disposal must account for their value to outside users). The NPRM does not identify any National Archives and Records Administration-approved disposition authority authorizing destruction of OOB records after 20 or 30 years, and ATF’s own trace data foreclose any conclusion that records completing tens of thousands of traces each year lack continuing value.

⁷⁸ The OOB records lack “a cost on regulated industry.” NPRM, 91 Fed. Reg. at 24419.

⁷⁹ The States do not take a position on whether these alternatives would be contrary to law or arbitrary and capricious.

ATF also failed to consider whether different categories of records warrant different treatment. The NPRM applies a flat age-based cutoff to all covered records, even though ATF's own data and systems identify records with heightened investigative value.⁸⁰ At minimum, ATF could preserve records that have already been the subject of a trace request, associated with theft or loss reports, records connected to recurring crime gun source dealers, or tied to known trafficking patterns or corridors. A risk-based alternative would reduce volume while preserving valuable records.

This is likewise true for its new private transfer retention requirements. Although the States support using Forms 4473 for private-party transfers as a meaningful improvement, ATF also must calibrate the retention period for those records with data. ATF does not explain why these records warrant less protection than the 20- or 30-year period proposed for other Forms 4473, a senseless distinction. It also fails to explain the counter-intuitive proposal whereby a Form 4473 from a denied private transfer would be retained for five years, while the form from a completed transfer that places a firearm into circulation warrants only 90 days' retention.⁸¹

Finally, where ATF invokes privacy concerns, the obvious alternative would be to address those concerns directly through safeguards, not destruction. ATF could impose enhanced access controls, query logging, audit trails, purpose limitations, use restrictions, and periodic compliance reviews for aged records. Destruction is especially unjustified here because ATF has repeatedly acknowledged that OOB records are neither searchable by name nor organized as a firearms registry; instead, they are maintained to support lawful criminal investigations.

D. The NPRM Provides No Quantifiable Benefits.

The Proposed Rule does not quantify any meaningful benefit to industry. Instead, ATF concedes that the asserted benefit is speculative, limited, and likely small.⁸² The imbalance is especially stark because ATF did quantify the public safety consequences, which amount to tens of thousands of failed crime gun traces every year.⁸³

The NPRM's own carveout confirms the imbalance. ATF would permanently preserve importer and manufacturer acquisition records because they aid prosecutions, establish interstate commerce, and show a firearm's age.⁸⁴ Those same functions apply to dealer A&D records and Forms 4473, which also identify the first retail purchaser—a fact manufacturer records cannot provide. Dealer and pawnbroker records account for approximately 93 percent of crime guns

⁸⁰ See NFCTA Vol. II, Part III, at 1 (Mar. 27, 2024).

⁸¹ Traced crime guns have a median time-to-crime of 1,293 days—approximately 3.5 years—and 1,237 days when recovered from someone other than the purchaser, meaning the proposed 90-day period ordinarily would expire before an investigation begins. That premature destruction is especially harmful because the Form 4473 may be the only federal record of a private-party transfer.

⁸² NPRM, 91 Fed. Reg. at 24419-20.

⁸³ See *id.* at 24416.

⁸⁴ NPRM, 91 Fed. Reg. at 24414. The NPRM's reliance on the 1985 rule for this distinction also misreads that rule, which rested on two "principal foundations"—proving interstate or foreign commerce and tracing crime guns, the latter "particularly important in support of State and local law enforcement"—not privacy; its only registry-related reference was a single commenter's proposal, which ATF rejected. 50 Fed. Reg. 26702, 26702 (June 28, 1985).

traced to a purchaser,⁸⁵ yet ATF offers no principled basis for preserving upstream records while destroying the records that complete the trace.

ATF's analysis also shows that the proposal addresses little, if any, real burden. Of 79,378 active FFLs, only 13,729—"only 17 percent"—had licenses originally issued before December 31, 2005,⁸⁶ meaning 83 percent of active FFLs do not yet have records old enough to be subject to a 20-year limit. ATF identifies no meaningful burden even for that minority, which may store records electronically or off-site,⁸⁷ while acknowledging that large dealers generally already have compliant systems and smaller dealers are typically too new to possess affected records.⁸⁸ Rather than a cost-benefit analysis, the NPRM essentially admits that the rule solves no problem.⁸⁹

IV. The Proposed Rule is Procedurally Defective in Violation of the APA.

The NPRM suffers from several procedural defects, which are not merely technical but go to the integrity of the process and cannot be cured through *post hoc* explanations in a final rule.

First, ATF's segmented rulemaking prevents meaningful comment on the rules' cumulative effect. ATF has divided nearly three dozen interlocking proposals among separate dockets, each asking the public to assess one component while assuming the rest of the regulatory system remains stable. This NPRM evaluates record destruction under the current Form 4473, verification rules, and licensed-dealer universe, while companion proposals revising Form 4473, authorizing electronic recordkeeping, altering non-over-the-counter transfers, and redefining "engaged in the business" and "willfulness" assume the current retention regime remains. Thus, no docket analyzes the system ATF actually proposes to create, even though *State Farm* requires consideration of the "relevant data," including the cumulative effects of related, contemporaneous rules.⁹⁰ Before finalizing any rule, ATF must identify the interrelated rulemakings, analyze their combined effects on firearm traceability, trafficking enforcement, and state and local enforcement systems in each docket. ATF should then reopen the comment periods so the public and the States can address the regulatory system ATF actually proposes.

Second, ATF has omitted information regarding the outside influence that appears to have shaped the NPRM. ATF's administrative record and public comments conflict concerning the development of this proposal. In materials accompanying the rulemaking package, ATF states that "[n]one of these rules were drafted directly or indirectly by any member of the gun industry."⁹¹ Yet ATF's own public communications, and the contemporaneous statements of industry, describe a

⁸⁵ See NFCTA Vol. II, Part III, Table OFT-06.

⁸⁶ NPRM, 91 Fed. Reg. at 24419-20.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ The NPRM's speculative burden argument is even harder to justify in light of ATF's companion Firearms Electronic Record-Keeping proposed rule (Electronic Record-Keeping NPRM). See 91 Fed. Reg. 25210, 25211 (proposed May 8, 2026). There, ATF proposes to authorize FFLs to generate, maintain, and store required records electronically.

⁹⁰ *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); see also *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 187 (D.C. Cir. 2011); *Nat'l Ass'n of Private Fund Managers v. SEC*, 151 F.4th 252, 270–73 (5th Cir. 2025).

⁹¹ ATF, *ATF Launches New Era of Reform: Questions and Answers* (2026), available at www.atf.gov/rules-and-regulations/atf-launches-new-era-reform/questions-and-answers.

materially different process. ATF's "New Era of Reform" materials characterize the NPRM as part of "a landmark package of proposed and final rules" built on "partnership with the firearms industry," "trust and collaboration," and "working with federal firearms and explosives licensees as partners[.]"⁹² That message was reinforced at the announcement itself: standing before representatives of National Shooting Sports Foundation (NSSF), the National Rifle Association (NRA), the American Suppressor Association (ASA), and the Gun Owners of America (GOA), ATF Director Cekada explained that the Bureau's year-long review considered "licensee feedback," involved conversations with "stakeholders," and produced a package grounded in "transparency, accountability, and partnership."⁹³ The NSSF claimed that the package was "the result of months of NSSF working closely with the ATF and DOJ" to identify and revise regulations, and that package included priorities "NSSF has long championed," including changes to record retention rules.⁹⁴ The ASA stated that it had "worked closely with Robert Cekada to ensure" gun owners had "a seat at the table in shaping policy."⁹⁵ The NRA described the package as reflecting its own recommendations, stating that the administration had already acted consistently with "at least half" of those suggestions, and that ATF's proposed rules "continued this momentum" through formal rulemaking.⁹⁶ GOA also claimed credit for the package, stating that it had been "lobbying the Justice Department for months . . . hoping to change ATF policy[.]"⁹⁷

Those statements conflict with an administrative record that deems industry involvement immaterial and denies it shaped the rules, directly or indirectly. ATF should place into the docket all materials concerning pre-NPRM and post-NPRM communications with industry representatives, trade associations, advocacy organizations, Members of Congress or their staff, and other stakeholders. ATF should then reopen the comment period for at least 90 days, so the public can test, examine, and comment on the materials on which ATF relies.

Third, ATF failed to conduct required consultation with States under Executive Order 13132. Despite the above-described impact on the States' crime gun tracing and prosecutions, the NPRM identifies no meaningful or timely consultation with the States, as required.⁹⁸ ATF also

⁹² ATF, *ATF's New Era of Reform* (May 12, 2026), available at <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform>; see also DOJ Press Release, *DOJ and ATF Announce Regulatory Reforms to Reduce Burdens on Law-Abiding Gun Owners and Businesses* (Apr. 29, 2026), available at www.justice.gov/opa/pr/doj-and-atf-announce-regulatory-reforms-reduce-burdens-law-abiding-gun-owners-and-businesses.

⁹³ Statement of Robert Cekada, ATF "New Era of Reform" Rulemaking Announcement (Apr. 29, 2026), available at <https://www.justice.gov/opa/video/acting-ag-blancie-and-acting-atf-director-cekada-announce-changes-atf-regulations>.

⁹⁴ NSSF, *NSSF Welcomes ATF Landmark Rulemaking Package* (Apr. 29, 2026), available at <https://www.nssf.org/articles/nssf-welcomes-atf-landmark-rulemaking-package/>; see also The Weekly Reload Podcast, "How ATF's New Regulations Change the Gun Industry (Ft. NSSF's Larry Keane)," published May 10, 2026, available at <https://thereload.com/podcast-how-atfs-new-regulations-change-the-gun-industry-ft-nssfs-larry-keane/> (Larry Keane, NSSF's Senior Vice President and General Counsel, claimed that ATF reached out to NSSF "as they were working on the drafts to get perspective from the industry.").

⁹⁵ Am. Suppressor Ass'n, *ASA Statement on Nomination of Robert Cekada for ATF Director* (Nov. 18, 2025), <https://americansuppressorassociation.com/news/asa-statement-on-nomination-of-robert-cekada-for-atf-director>.

⁹⁶ Nat'l Rifle Ass'n, *ATF Announces New Director, Historic Regulatory Overhaul* (Apr. 30, 2026), available at <https://www.nraila.org/articles/20260430/atf-announces-new-director-historic-regulatory-overhaul>.

⁹⁷ Gun Owners of Am., *Here's What GOA Did for Your Gun Rights This Week* (May 2, 2026), available at <https://www.gunowners.org/na040226/>.

⁹⁸ Executive Order 13132 and the Office of Management and Budget's ("OMB") implementing guidance require more than a conclusory certification. The NPRM does not identify any meaningful or timely consultation with the

failed to analyze how the proposal's burdens would be distributed among States. ATF's own data shows that many of the States will be disproportionately impacted by this proposal. A state with longer average time-to-crime and heavier dependence on out-of-state traces will be disproportionately harmed by a proposal that destroys older records.

Finally, ATF wrongly avoided centralized regulatory review. The NPRM states that OMB determined the change is not a "significant regulatory action" under Executive Order 12866 and so did not review this rule. But ATF's own record identifies the relevant significant effects.⁹⁹ First, the Bureau's data show the proposal would have eliminated close to 50,000 successful traces in fiscal year 2024 alone, which change "may have a cost impact on the public in the form of marginally greater public safety risk"¹⁰⁰ because failed traces could hinder law enforcement. Second, the proposal raises novel, important policy questions that, similarly, qualify as "significant."¹⁰¹ It would reverse the indefinite retention framework adopted in 2022 and authorize destruction of hundreds of millions of OOB records already in federal custody, along with an unknown number held by FFLs. Its effect on the States is independently significant, because state and local police departments, prosecutors, crime gun intelligence centers, and state attorneys general rely on ATF's tracing infrastructure to solve firearms-related crimes.

V. ATF Has Not Satisfied the Paperwork Reduction Act.

ATF's Paperwork Reduction Act ("PRA") discussion identifies a separate procedural defect. ATF concedes that the rule "would create an information collection request associated with 27 CFR 478.127," and "would revise four existing information collections."¹⁰² The PRA requires ATF to justify each collection, estimate and minimize burdens, obtain OMB approval, and allow public comment.¹⁰³ ATF's statement that the proposal "would not add to the burdens imposed on the respondent" answers none of that: it supplies no supporting analysis for collection or the four revisions and leaves the admitted control-number lapse uncured—a lapse with consequences, since a collection lacking a valid, current control number cannot be enforced against any person.¹⁰⁴

VI. ATF's Regulatory Flexibility Act Certification Is Unfounded.

ATF's Regulatory Flexibility Act ("RFA") certification is factually baseless.¹⁰⁵ The Director certified that the rule "is deregulatory in nature," would save the regulated industry

States, describe which state or local officials were consulted, summarize any concerns raised by those officials, or explain how ATF considered those concerns. Instead, the NPRM assumes without explanation that no federalism consultation was required despite the proposal's clear effects on State systems and public-safety responsibilities. *See* NPRM, 91 Fed. Reg. at 24421.

⁹⁹ Exec. Order No. 12,866 § 3(f) (a rule to be significant if it is likely to "adversely affect in a material way" public health or safety, or State, local, territorial, or tribal governments or communities).

¹⁰⁰ NPRM, 91 Fed. Reg. at 24419.

¹⁰¹ Exec. Order 12866 (defining "significant regulation action" to also mean any action that may "raise novel legal or policy issues").

¹⁰² NPRM, 91 Fed. Reg. at 24422.

¹⁰³ *See* 44 U.S.C. §§ 3506(c), 3507.

¹⁰⁴ *See id.* at § 3512(a).

¹⁰⁵ *See* 5 U.S.C. § 605(b); *see id.* §§ 601–612. RFA certifications are subject to judicial review under 5 U.S.C. § 611(a).

money, and “reduces costs to small entities.”¹⁰⁶ Yet, ATF’s own cost-benefit analysis acknowledges that those savings are difficult to quantify, are “of unknown magnitude and number of beneficiaries,” and would benefit “only a de minimis number of FFLs.”¹⁰⁷ ATF cannot rely on industry savings to avoid an RFA analysis while simultaneously conceding that those savings are unknown and limited to a negligible subset of licensees.

VII. Conclusion

The Proposed Rule would cause irreparable harm to public safety, harming the States, its law enforcement agencies, and its citizens. It is an unexplained reversal of recent and considered policy without the reasoned explanation the APA requires. It has relied on a factual record that is internally inconsistent and, in places, contradicted by the Bureau’s own published data. The States therefore urge ATF to withdraw the Proposed Rule and select the no-action alternative.¹⁰⁸

Sincerely,



Andrea Joy Campbell
Massachusetts Attorney General



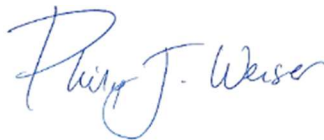
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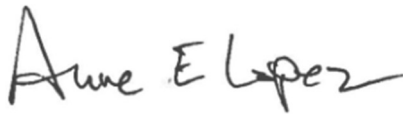


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¹⁰⁶ NPRM, 91 Fed. Reg. at 24422.

¹⁰⁷ *See id.* at 24419–20.

¹⁰⁸ *See id.* at 24421 (“Guidance or No Action (Keeping Indefinite Retention Period)”).



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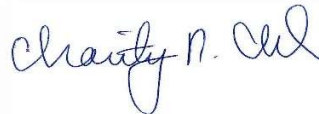
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