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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
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Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
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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 records[2] 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.

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[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

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[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]

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[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 restrictions[39]—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 2024[63]—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

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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.

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[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

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[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

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[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

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[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-blanche-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,

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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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