



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

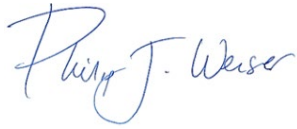
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by which to avoid NICS background checks or similar checks, subverting the central aims of the Brady Act. ATF should withdraw the Proposed Rule.

Sincerely,



Jennifer Davenport
Attorney General of New Jersey



Philip J. Weiser
Attorney General of Colorado



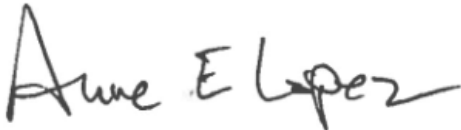
Rob Bonta
Attorney General of California



Kathleen Jennings
Attorney General of Delaware



William Tong
Attorney General of Connecticut



Anne E. Lopez
Attorney General of Hawai'i



Brian L. Schwalb
Attorney General for
the District of Columbia



Aaron M. Frey
Attorney General of Maine



Kwame Raoul
Attorney General of Illinois



Andrea Joy Campbell
Attorney General of Massachusetts



Anthony G. Brown
Attorney General of Maryland



Keith Ellison
Attorney General of Minnesota



Dana Nessel
Attorney General of Michigan



Letitia James
Attorney General of New York



Raúl Torrez
Attorney General of New Mexico



Dan Rayfield
Attorney General of Oregon



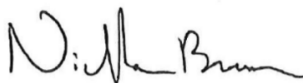
Aaron D. Ford
Attorney General of Nevada



Charity R. Clark
Attorney General of Vermont



Peter F. Neronha
Attorney General of Rhode Island



Nick Brown
Attorney General of Washington



Jay Jones
Attorney General of Virginia