August 4, 2026

Via Federal eRulemaking Portal

Honorable Todd Blanche
Acting Attorney General of the United States

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

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

Dear Acting Attorney General Blanche and Director Cekada,

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

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

Rule),[1] that clarified federal licensing requirements[2] and closed the so-called "fire-sale loophole"—the latter of which enabled former federal firearms licensees (FFLs) to avoid background check requirements when liquidating their business inventory.[3] In particular, the Proposed Rule rescinds the rebuttable presumptions that a person is "engaged in the business" of dealing firearms;[4] rescinds parts of the 2024 Rule's definition of "personal collection" such that more kinds of firearms will be exempted from the definition of "engaged in the business";[5] and rescinds several provisions setting forth the obligations of licensees discontinuing their business,[6] which may make it easier for former licensees to divert their inventory to unregulated markets. These changes jeopardize the significant progress the federal government has made—including through the 2024 Rule—in closing loopholes that facilitated the sale and transfer of firearms by unlicensed dealers. These changes will also harm the States' interest in preventing unlawful firearms sales (including those designed to circumvent background checks) and in curtailing interstate firearms trafficking.

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

While those flaws are apparent on the face of the Proposed Rule, it was also issued as part of a broader deregulatory package that exacerbates the harm to public safety. While ATF attempts to justify this package as part of "streamlining regulations" and "reducing burden on dealers and gun owners alike," these proposals do not each operate in isolation.[9] The uncertainty and incentives to engage in unlicensed dealing created by the Proposed Rule in particular must be understood in the context of ATF's broader efforts to heighten the standard for proving culpability for straw purchasing[10] and other violations by FFLs,[11] weaken multiple point-of-sale controls including loosening residence requirements and verification for firearms purchases,[12] and allow remote verification of identity documents for firearm purchases,[13] among other changes. So while the Proposed Rule is unlawful and harmful to public safety on its own, it will have even more

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[1] Definition of "Engaged in the Business" as a Dealer in Firearms, 89 Fed. Reg. 28,968 (Apr. 19, 2024).
[2] *Id.* at 28,975–81.
[3] *Id.* at 28,982 & n.105.
[4] Revising Regulations Defining "Engaged in the Business" as a Dealer in Firearms, 91 Fed. Reg. 24,424, 24,426–27 (proposed May 6, 2026).
[5] *Id.* at 24,429–30.
[6] *Id.* at 24,430.
[7] Pub. L. No. 117-159, 136 Stat. 1313 (2022).
[8] *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983).
[9] *ATF's New Era of Reform*, Bureau of Alcohol, Tobacco, Firearms, & Explosives (May 12, 2026), https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform.
[10] Firearms Transactions and Straw Purchases, 91 Fed. Reg. 24,448 (proposed May 6, 2026).
[11] Defining "Willfully" for Firearms Violations, 91 Fed. Reg. 25,201 (proposed May 8, 2026).
[12] Revising Firearms Transaction Record, "Form 4473," 91 Fed. Reg. 25,432 (proposed May 8, 2026).
[13] Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. 25,216 (proposed May 8, 2026).

severe and damaging consequences when operating in tandem with these broader deregulatory efforts.

I. Background.

A. Statutory and Regulatory Background.

The Gun Control Act of 1968 (GCA)[14] was enacted to aid law enforcement in fighting crime[15] and, in particular, to address the pervasive problem of interstate firearms trafficking.[16] Core to the GCA is the judgment "that there was a serious problem of individuals going across State lines to procure firearms which they could not lawfully obtain or possess in their own State," and that absent federal restrictions on firearms trafficking, state and local law enforcement would not be able "to control this traffic within their own borders through the exercise of their police power."[17] Congress chose to regulate firearms dealers by requiring that all persons "engaged in the business" of selling firearms obtain a federal firearms license and comply with basic safety measures.[18] Among other things, federal law prohibits FFLs from transferring firearms to prohibited persons such as felons, individuals with domestic violence restraining orders, or those with outstanding arrest warrants.[19] FFLs are also required to initiate background checks before transferring firearms and to maintain records of firearms sales that can be used in criminal investigations and enforcement.[20]

In 1986, Congress amended the GCA to define "engaged in the business" in reference to a person's "principal objective of livelihood and profit."[21] The ambiguity about the meaning of this phrase created loopholes that unlicensed dealers used to bypass the GCA's requirements—and thus to sell firearms without following federal background-check and record-keeping requirements. At the same time, some States filled these gaps by regulating firearms transfers beyond the requirements of federal law, including by requiring background checks for all or nearly all firearms purchases from unlicensed sellers and by licensing state firearms dealers.[22] But the States' ability to prevent this problem is hampered by the reality of interstate firearms trafficking.

That status quo lasted for more than a quarter century. In the aftermath of a series of mass shootings, including one in which a prohibited person circumvented background check

[14] Pub. L. No. 90-618, 82 Stat. 1213 (1968).
[15] *Id.* § 101, 82 Stat. at 1213.
[16] *Huddleston v. United States*, 415 U.S. 814, 824 (1974).
[17] *Mance v. Sessions*, 896 F.3d 699, 705–06 (5th Cir. 2018) (citing Congress' findings in the GCA and Crime Control Act of 1968).
[18] *See Abramski v. United States*, 573 U.S. 169, 172–73 (2014); *Huddleston*, 415 U.S. at 824.
[19] 18 U.S.C. § 922(d).
[20] *Id.* §§ 922(t), 923(g); *Abramski*, 573 U.S. at 181 (noting "Congress's principal purpose" in enacting GCA was "to curb crime by keeping firearms out of the hands of those not legally entitled to possess them" (citing *Huddleston*, 415 U.S. at 824)).
[21] Firearms Owners' Protection Act, Pub. L. No. 99-308, § 101(6), 100 Stat. 449, 450 (1986) .
[22] *See, e.g.*, N.J. Stat. Ann. § 2C:58-3(a)(3); N.J. Stat. Ann. § 2C:58-2(a); N.Y. Gen. Bus. Law §§ 875-A to -I, 898; N.Y. Penal Law § 400.00; Firearm Dealer License Certification Act, 430 Ill. Comp. Stat. 68; Mass. Gen. Laws ch. 140, §§ 122, 123, 128A; Cal. Penal Code §§ 26805, 27545, 27310, 28050.

requirements to obtain a firearm from an unlicensed dealer,[23] Congress passed the BSCA, which broadened the definition of "engaged in the business" and eliminated prior ambiguities around the requirement to be licensed as an FFL, thereby increasing the number of firearms transfers subject to the GCA's background check and recordkeeping requirements.[24] Instead of defining "engaged in the business" in terms of a "principal objective of livelihood and profit," the BSCA defined a person "engaged in the business" as:

> a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business *to predominantly earn a profit* through the repetitive purchase and resale of firearms[.][25]

A person seeks "to predominantly earn a profit" if "the intent underlying the sale or disposition of firearms is predominantly one of obtaining pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection."[26] Nevertheless, Congress preserved a narrow carveout for those "who make[] occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection," from this definition.[27]

On April 19, 2024, ATF finalized the 2024 Rule, implementing the BSCA's revised statutory language and clarifying when a person is "engaged in the business" of dealing firearms.[28] ATF estimated that anywhere from 25,563 to 95,505 previously unlicensed individuals would now need federal licenses, which principally means that they would have to take basic steps like conducting background checks and keeping firearms sale records as required by the GCA.[29] As a result, ATF concluded that the 2024 Rule will "help[] prevent firearms from being sold to felons or other prohibited persons, who may then use those firearms to commit crimes and acts of violence,"[30] and "help Federal, State, local, and Tribal law enforcement solve crimes involving firearms through crime gun tracing."[31]

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[23] The BSCA was enacted in the wake of a series of mass shootings, including in Odessa, Texas where the perpetrator "circumvented the NICS background check process" by purchasing an AR-15 rifle from an unlicensed private seller. Definition of "Engaged in the Business" as a Dealer in Firearms, 89 Fed. Reg. at 28,971–72, 28,971 nn. 26–27 (citing Acacia Coronado & Alex Samuels, *Death Toll in Midland-Odessa Mass Shooting Climbs to Eight, Including the Shooter*, Texas Tribune (Aug. 31, 2019), https://www.texastribune.org/2019/08/31/odessa-and-midland-shooting-30-victims-reports-say/; Press Release, U.S. Dep't of Justice, Man Who Sold Midland/Odessa Shooter AR-15 Used in Massacre Sentenced for Unlicensed Firearms Dealing (Jan. 7, 2021), https://www.justice.gov/usao-ndtx/pr/man-who-sold-midlandodessa-shooter-ar-15-used-massacre-sentenced-unlicensed-firearms).
[24] William J. Krouse, Cong. Rsch. Serv., IF12197, Firearms Dealers "Engaged in the Business" 2 (2022), https://crsreports.congress.gov/product/pdf/IF/IF12197; *see infra* Section II.A.
[25] 18 U.S.C. § 921(a)(21)(C) (emphasis added).
[26] 18 U.S.C. § 921(a)(22).
[27] 18 U.S.C. § 921(a)(21)(C).
[28] Definition of "Engaged in the Business" as a Dealer in Firearms, 89 Fed. Reg. at 28,968.
[29] *Id.* at 29,071–73.
[30] *Id.* at 29,085.
[31] *Id.* at 28,988.

B. The Proposed Rule.

On May 6, 2026, ATF issued the Proposed Rule, which rescinds three core parts of the 2024 Rule that provided clarification to regulated entities and the public regarding the scope and meaning of "engaged in the business"—as well as the obligations of licensees in disposing of their firearms inventory as part of a discontinuance of business.

First, the Proposed Rule rescinds the 2024 Rule's list of specific examples of facts that would in ATF's judgment establish rebuttable presumptions (or "fact-pattern presumptions") about when that person is in fact engaged in the business of dealing firearms and when that person in fact has the intent to predominantly earn a profit.[32] The Proposed Rule deletes language from the definition of "predominantly earn a profit" which clarifies that the *intent* to profit does not require *realization* of the intended pecuniary gain.[33]

Second, the Proposed Rule rescinds in part the agency's prior definition of "personal collection" (a term undefined in the BCSA), which helps define the narrow exception to the definition of "engaged in the business" in 18 U.S.C. § 921(a)(21)(C) and 27 C.F.R. § 478.13(a).[34] The 2024 Rule provided a general definition of "personal collection" to include certain firearms accumulated "for study, comparison, exhibition" or "for a hobby," but excludes "firearms accumulated primarily for personal protection."[35] The Proposed Rule rescinds that general definition of "personal collection" in its entirety.[36]

Third, it also rescinds the definition of "former licensee inventory," which, along with other provisions regulating an FFL's discontinuation of business, prohibits a former licensee from disposing of business inventory more than 30 days following the discontinuation of business.[37] Under the 2024 Rule, a former licensee must, within 30 days after discontinuing business, either sell any firearms in their business inventory to other licensees, or transfer them into their personal collection.[38] But the Proposed Rule gives former licensees a greater ability to continue reselling firearms without being presumed to be "engaged in the business."

II. The Proposed Rule is Arbitrary and Capricious.

The Proposed Rule is arbitrary and capricious because it undermines the BSCA's central requirements to provide clarity and guidance to regulated entities and the public, while at the same time overlooking and even exacerbating the public-safety problem that motivated the BCSA's passage. The Proposed Rule further relies on conclusory statements, speculative harms, and flawed

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[32] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,430–31; *see* 27 C.F.R. § 478.13(c)(1)–(5) (listing fact patterns when a person shall be presumed to be engaged in the business of dealing firearms); *id.* § 478.13(d)(2) (listing seven presumptions when a person shall be presumed to have the intent to predominantly earn a profit).
[33] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,436.
[34] *Id.* at 24,429.
[35] *Id.*
[36] *Id.* at 24,430.
[37] *Id.*
[38] Definition of ''Engaged in the Business'' as a Dealer in Firearms, 89 Fed. Reg. at 29,090 (promulgating definition of "former licensee inventory" in 27 C.F.R. § 478.11).

evidence, and contradicts or rejects the factual and legal findings underlying the 2024 Rule without adequate explanation. It also fails to consider straightforward reasonable alternatives within the ambit of the prior policy, instead opting for the drastic option of rescission. This falls well short of the APA's requirement that agencies engage in "reasoned decisionmaking,"[39] including by "show[ing] that there are good reasons for the new policy" and providing a "detailed justification" when the agency changes course.[40]

A. The Proposed Rule Exacerbates the Problem of Unlicensed Dealing, Thus Undermining the Central Public Safety Aims of the BSCA.

The "fact-pattern presumptions" in the 2024 Rule provide licensed entities and the public with readily comprehensible examples of what the statutory terms "engaged in the business" and "personal collection" mean (including by defining "former licensee inventory" as something distinct from a "personal collection"). The Proposed Rule, by rescinding the "fact-pattern presumptions," would reintroduce confusion into an area of regulation that has long been fraught with both intentional and unintentional noncompliance. Congress passed the BSCA to reduce "confusion about the GCA's definition of 'engaged in the business,' as it pertained to individuals who bought and resold firearms repetitively for profit," and the BSCA's sponsors specifically sought to "clarify who should be licensed, eliminat[e] a 'gray' area in the law, [and] ensur[e] that one aspect of firearms commerce is more adequately regulated."[41] Members of Congress anticipated that more sellers would be required to become FFLs under the new definition, which would, in turn, lead to more firearms sales that require a background check.[42]

The 2024 Rule advanced these aims by clarifying the meanings of the BCSA's core terms. Because the BSCA changed a statutory definition in effect for over 25 years, stakeholders and the public needed clear guidance regarding the new definition—which the 2024 Rule's presumptions provided, drawing on ATF's "enforcement efforts, regulatory functions, knowledge of existing case law, and subject-matter expertise."[43] Under the APA, "agencies may adopt evidentiary presumptions provided that the presumptions (1) shift the burden of production and not the burden of persuasion, and (2) are rational."[44] Here, the rebuttable presumptions amply satisfy both requirements because they shift only the burden of production and are undisputedly "rational"[45]

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[39] *State Farm*, 463 U.S. at 52.
[40] *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009).
[41] Definition of ''Engaged in the Business'' as a Dealer in Firearms. 89 Fed. Reg. 28,972 & nn. 29–30 (quoting William J. Krouse, Cong. Rsch. Serv., IF12197, Firearms Dealers "Engaged in the Business" 2 (2022), https://crsreports.congress.gov/product/pdf/IF/IF12197) (citation modified)); *see also* 168 Cong. Rec. H5906 (daily ed. June 24, 2022) (statement of Rep. Jackson Lee); 168 Cong. Rec. S3055 (daily ed. June 22, 2022) (statement of Sen. Chris Murphy).
[42] *See, e.g.*, 168 Cong. Rec. S3105 (daily ed. June 23, 2022) (statement of Sen. Martin Heinrich); 168 Cong. Rec. S3118 (daily ed. June 23, 2022) (statement of Sen. Jack Reed); 168 Cong. Rec. H5904 (daily ed. June 24, 2022) (statement of Rep. Jerrold Nadler).
[43] Definition of ''Engaged in the Business'' as a Dealer in Firearms, 89 Fed. Reg. at 28,975.
[44] *Cablevision Systems Corp. v. FCC*, 649 F.3d 695, 716 (D.C. Cir. 2011) (citations omitted); *see also Cole v. U.S. Dep't of Agric.*, 33 F.3d 1263, 1267 (11th Cir. 1994) ("The law is well established that presumptions may be established by administrative agencies, as long as there is a rational nexus between the proven facts and the presumed facts.").
[45] *Am. Petroleum Inst. v. Env't Prot. Agency*, 862 F.3d 50, 63 (D.C. Cir. 2017).

since they are based on "firearms purchase-and-sales activities [that] are more likely than not" correlated with being "engaged in the business" of dealing firearms.[46] They thus provide rational and necessary guidance to affected parties.

While these presumptions apply only in civil and administrative contexts, and can be rebutted with "reliable evidence," the presumptions help clarify the types of activities that require licensure.[47] As the Proposed Rule acknowledges, these parts of the 2024 Rule furthered the BSCA's underlying goals by explicitly describing the types of activities covered by the statutory definition of "engaged in the business."[48] By dismissing the presumptions as unnecessary, the Proposed Rule overlooks that it is sacrificing the clearer guidance and regulatory certainty Congress sought to achieve through the BCSA.[49]

Despite purporting to address "confusion around conduct that falls outside the GCA's definition of engaged in the business," the Proposed Rule also overlooks that rescinding the "fact-pattern presumptions" may *exacerbate* the confusion about the definition of "engaged in the business," and thus fails to consider an important aspect of the problem that Congress sought to address through the BCSA. The Proposed Rule does *not* dispute that these "fact-pattern presumptions" all describe a set of facts that would support a finding that a person is "engaged in the business" of dealing firearms.[50] But rescinding those specific presumptions about what behavior constitutes being "engaged in the business" could reasonably lead dealers to conclude that engaging in the specific behavior described in those presumptions is no longer considered conduct that constitutes being "engaged in the business" of firearms dealing, undermining overall compliance. In other words, removing the fact-pattern presumptions does not mean that conduct is now lawful; it simply means confusion will reign. The agency thus had to reasonably explain why a lack of clarity was better than clear presumptions, but it has failed to sufficiently do so in the current proposal.

Finally, until the 2024 Rule addressed it, the so-called "fire-sale loophole" allowed FFLs ostensibly discontinuing their business to transfer their business inventory of firearms to their "personal collection." Once re-classified as part of a "personal collection," the same firearms that had been part of the business inventory would then often be sold in an unregulated market. This often resulted in diversion of those firearms to the illegal market, contributing to a significant public safety problem.[51] The Proposed Rule acknowledges that the 2024 Rule directly addressed

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[46] Definition of ''Engaged in the Business'' as a Dealer in Firearms, 89 Fed. Reg. at 28,975; *see id.* at 28,978–79 (describing the basis for each presumption).

[47] *Id.* at 28,975–76 (noting that the presumptions "help unlicensed persons, industry operations personnel, and others determine when a person is likely 'engaged in the business' requiring a dealer license").

[48] *See* Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,426–27.

[49] Definition of ''Engaged in the Business'' as a Dealer in Firearms, 89 Fed. Reg. at 29,083 (noting that the 2024 Rule "helps ensure such persons obtain licenses and comply with the safeguards in the GCA").

[50] *E.g.*, Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,427 ("To be clear, discarding the presumptions does not mean that a person who engages in behavior identified by the presumptions will not be found to be engaged in the business.").

[51] *See* Definition of ''Engaged in the Business'' as a Dealer in Firearms, 89 Fed. Reg. at 28,982 n. 105 (citing case of dealer who, after his license was revoked, transferred about 700 guns to his personal collection and continued selling them without recordkeeping).

this problem, finding that it "limits a former licensee to disposing of the inventory within 30 days after it discontinues business and effectively prevents former licensees from reclassifying inventory purchased repetitively with the intent to resell for profit while licensed as personal firearms in a ''personal collection'' after they become unlicensed."[52] Yet the Proposed Rule would undo the 2024 Rule's steps to close this loophole, leaving in their place only ATF's admission that "some process for addressing the inventory of former licensees is appropriate."[53]

This change risks resuming the diversion of firearms from former licensees into the illegal market.[54] These are firearms that were part of a business inventory, repetitively purchased for resale with the "predominant intent to profit."[55] The lack of oversight over FFLs who take such firearms and then seek to deem them their "personal collection" at resale creates confusion for former licensees and law enforcement. The Proposed Rule arbitrarily risks reopening this loophole and reintroduces ambiguity—without sufficient reasons why.

B. The Proposed Rule Fails to Consider the Public Safety Harms of Unlicensed Dealing and its Impact on Law Enforcement.

The Proposed Rule is also arbitrary and capricious because it ignores the threat to public safety posed by unlicensed dealing and its effects on law enforcement. The Proposed Rule will most likely increase unlicensed dealing (including sales to prohibited persons), which exacerbates the epidemic of gun violence in communities across the United States and undermines States' ability to prevent and investigate violent crime. Despite admitting that one result of rescinding the rebuttable presumptions is a "potential increase in persons who should be licensed remaining unlicensed"[56] and despite conceding that this risk is squarely within the harms Congress sought to prevent in enacting the GCA, the Proposed Rule dismisses the resulting threat to public safety as "de minimis."[57] ATF's failure to give these harms serious consideration illustrates the defects in its decisionmaking.[58]

Gun violence continues to have a severe impact across the country, including on the States' residents, and unlicensed dealing fuels this epidemic. Gun violence, including mass violence, domestic violence, and suicide—which makes up the largest share of gun deaths in the country[59]—

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[52] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,430.
[53] *Id.*
[54] *See* Definition of ''Engaged in the Business'' as a Dealer in Firearms, 89 Fed. Reg. at 28,982 & n.105; Definition of ''Engaged in the Business'' as a Dealer in Firearms, 88 Fed. Reg. 61,993, 62,006–07 (proposed Sep. 8, 2023).
[55] Definition of ''Engaged in the Business'' as a Dealer in Firearms, 89 Fed. Reg. at 29,051.
[56] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg at 24,432.
[57] *Id.* at 24,432–33
[58] *See State Farm*, 463 U.S. at 43 (holding that it is arbitrary and capricious to "entirely fail[] to consider an important aspect of the problem").
[59] *See* John Gramlich, *What the Data Says About Gun Deaths in the U.S.*, Pew Research Center (Apr. 28, 2026), https://www.pewresearch.org/short-reads/2026/04/28/what-the-data-says-about-gun-deaths-in-the-us/; Bloomberg Sch. of Pub. Health, *Declining Gun Homicides, Record Gun Suicides in 2024*, Johns Hopkins Univ.: Hub (July 10, 2026), https://hub.jhu.edu/2026/07/10/declining-gun-homicides-record-gun-suicides-2024.

has continued to occur amidst the rollback of existing firearms regulations, sometimes involving persons prohibited from possessing firearms under federal law.[60]

Unlicensed dealing anywhere in the country threatens public safety because prohibited persons can avoid background checks that would otherwise keep them from purchasing firearms. A study conducted by the ATF along with subject-matter experts supports this conclusion. It found that "prohibited persons determined to get crime guns acquire them through underground crime gun markets that involve unregulated transactions with acquaintances and illicit 'street' sources."[61] An ATF analysis of closed firearms trafficking investigations from 2017 to 2021 also found that unlicensed sellers are the leading source of illegally trafficked firearms: unlicensed dealing appeared in nearly 41% of cases and accounted for more than 68,000 trafficked guns,[62] and firearms trafficked through unlicensed sellers were used in shootings in 16% of those cases.[63] By contrast, an increase in licensed dealers results in more prospective unlawful purchasers being flagged at the point of sale, mitigating the risk that a gun will reach someone who puts the safety of the public, or their own safety, at risk.

But the Proposed Rule does not acknowledge the seriousness of the threat, instead dismissing the public-safety risks from unlicensed dealing as "qualitative and speculative, imposing no quantifiable costs."[64] That ignores the foreseeable injuries and loss of life from the increased risk of gun violence resulting from higher rates of unlicensed dealing and the associated economic impacts, which are easily quantifiable. Moreover, the Proposed Rule's assessment of the costs and benefits is internally inconsistent: in assessing the 2024 Rule's benefits, it demands proof of an "actual increase in the rate of licensure since the issuance of the [2024 Rule]",[65] yet it justifies partial rescission of that rule based on little more than speculation that the prior rule "might" cause individuals to erroneously assume they need to be licensed in order to sell their personal firearms collections.[66] ATF's internally inconsistent assessment of the costs and benefits is textbook arbitrariness.

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[60] In one recent example involving domestic violence, mass violence, and suicide, in April 2026, a gunman killed eight children—including 7 of his own—despite having a prior felony conviction that prohibited him from purchasing firearms. *What We Know About the Mass Shooting in Shreveport, Louisiana*, Everytown for Gun Safety (Apr. 21, 2026), https://www.everytown.org/press/what-we-know-about-the-mass-shooting-in-shreveport-louisiana/.

[61] Definition of ''Engaged in the Business'' as a Dealer in Firearms, 89 Fed. Reg. at 29,083 (quoting Bureau of Alcohol, Tobacco, Firearms & Explosives, *National Firearms Commerce and Trafficking Assessment (NFCTA), Volume II: Crime Guns*, pt. III, at 41 (Apr. 6, 2026), https://www.atf.gov/media/15426/download).

[62] *See* Bureau of Alcohol, Tobacco, Firearms & Explosives, *National Firearms Commerce and Tracking Assessment (NFCTA), Volume III: Firearms Trafficking Investigations*, pt. III, at 1 tbl. FTC-02 (Apr. 6, 2026), https://www.atf.gov/media/20751/download; Bureau of Alcohol, Tobacco, Firearms & Explosives, *National Firearms Commerce and Trafficking Assessment (NFCTA), Volume III: Firearms Trafficking Investigations*, pt. V, at 10 tbl. TVF-06 (Apr. 6, 2026), https://www.atf.gov/media/20771/download.

[63] *See* Bureau of Alcohol, Tobacco, Firearms & Explosives, *National Firearms Commerce and Trafficking Assessment (NFCTA), Volume III: Firearms Trafficking Investigations*, pt. IX, at 5 tbl. IO-06 (Apr. 6, 2026), https://www.atf.gov/media/14521/download.

[64] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,433.

[65] *Id.* at 24,434.

[66] *Id.*

In reality, the public-safety threat is acute. Even States with rigorous laws governing the sale and transfer of firearms cannot entirely prevent the harms associated with unlicensed dealing, because firearms obtained in jurisdictions with lax firearms laws are often trafficked into jurisdictions with stronger laws. Between 2016 and 2020, 27% of traced guns, or 390,154 guns, were recovered in a state other than where they were originally sold, and 74% of those guns were originally purchased in states that have not enacted background check laws beyond the federal floor.[67] To provide a State-specific example, in 2021, just over half (50.4%) of the firearms recovered by law enforcement in California and successfully traced to a final dealer of record were traced to dealers located in other states.[68] The cross-border trafficking of firearms means it is increasingly difficult for state background-check laws alone to effectively protect the public without the backstop of a robust federal regulatory framework.[69] The 2024 Rule was a step in that direction. But the Proposed Rule walks back that progress and will likely lead to more firearm sales involving unlicensed dealers in states that merely abide by the minimum federal requirements.

The Proposed Rule would also undermine crime gun tracing, which ATF has concluded is "one of the most valuable and effective services ATF provides to law enforcement agencies—nationally and internationally—in investigating crimes involving firearms."[70] FFLs are required to maintain records that are critical to federal, state, and local law enforcement's abilities to investigate violent crimes involving firearms. Whenever law enforcement recover firearms used in crimes, that firearm can provide important evidence to identify the perpetrator and any gun trafficking networks. State or local law enforcement submit manufacturer and serial number information to ATF for tracing, and this information is then used to identify both initial and secondary purchasers as leads for further investigation.[71] Crime gun tracing is also a critical strategy to identify straw purchasers who are frequently the "lynchpin[s] of most firearms trafficking operations."[72] ATF's ability to trace crime guns depends heavily on records kept by

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[67] Everytown Rsch & Pol'y, *Five Things to Know About Crime Guns, Gun Trafficking, and Background Checks* (May 24, 2021), https://everytownresearch.org/report/five-things-to-know-about-crime-guns/. Massachusetts's experience is illustrative: although it licenses dealers, restricts transfers by unlicensed persons to license-holders who have passed a background check, and requires reporting of every transfer, in 2023, more than 65% of recovered crime guns were first sold outside the Commonwealth. *See* Mass. Gen. Laws ch. 140, §§ 122, 123, 128A; St. 2024, c. 135; Bureau of Alcohol, Tobacco, Firearms & Explosives, *Firearms Trace Data: Massachusetts – 2023*, https://www.atf.gov/resource-center/firearms-trace-data-massachusetts-2023 (last visited July 27, 2026).

[68] *See* Cal. Dep't of Justice, Off. of Gun Violence Prevention, *2023 Data Report: The Impact of Gun Violence in California* 17–18 (Aug. 2023), https://oag.ca.gov/system/files/media/OGVP-Data-Report-2022.pdf.

[69] Brian Knight, *State Gun Policy & Cross-State Externalities: Evidence from Crime Gun Tracing*, 5 Am. Econ. J.: Econ. Pol'y 200, 224 (2013) (concluding that extending licensing requirements to dealers in states with little to no firearms regulations will decrease the interstate trafficking of firearms into other states and "eliminate incentives for trafficking").

[70] Definition of ''Engaged in the Business'' as a Dealer in Firearms, 89 Fed. Reg. at 29,083 (concluding that increased licensing of FFLs "will enhance the capacity of the Department to successfully complete crime-gun traces for law enforcement partners globally").

[71] *Id.* (noting that "[c]rime-gun tracing is one of the most valuable and effective services ATF provides to law enforcement agencies," and in FY2022, "the Department performed over 623,000 crime-gun traces . . . [including] 27,156 . . . deemed 'urgent,'" encompassing firearms used in "mass shootings, homicides, bank robberies, and other immediate threats to officer and public safety").

[72] *Id.*

FFLs, and thus private sales present a crime-gun-tracing impasse.[73] The 2024 Rule shifted a significant number of formerly unlicensed sales to licensed dealers, enhancing the ATF's trace capacities. The Proposed Rule's rescission of those steps would diminish the ATF's capacity for crime gun tracing, resulting in increased threats to public safety and hampering law enforcement's ability to solve past crimes and prevent future crimes.

Last, the Proposed Rule arbitrarily fails to consider or justify the ways in which it contributes to the cumulative public-safety harms from ATF's broader deregulatory package. In particular, ATF is simultaneously proposing to require a heightened mens rea for proving a licensee's violations of federal firearms regulations, reduce incentives for FFLs to police for straw purchasing, eliminate reliable residence identification requirements for firearm purchases, and allow more firearm sales to take place over the Internet and without a background check—all of which will make it easier for firearms dealers to sell firearms while avoiding licensure and/or sell firearms without undergoing background checks. Indeed, ATF has publicly emphasized that it views these related deregulatory changes as operating in tandem.[74] Having presented these proposals to the public as a coordinated package, ATF cannot rationally evaluate this Proposed Rule without assessing these proposals' aggregate effect on unlicensed dealing, the background check system, and the effectiveness of crime-gun tracing. So the Proposed Rule not only fails to account for the risks to public safety it produces in isolation, it also ignores the broader ways in which it exacerbates the aggregate harm to public safety from this suite of interrelated deregulatory changes.

C. The Proposed Rule's Stated Justifications Are Unsupported or Even Refuted by the Evidence Before the Agency.

In addition to failing to consider the life-or-death consequences of the rescissions, the Proposed Rule reflects arbitrary decision-making because its stated justifications are speculative, conclusory, and inconsistent with ATF's previous factual findings. The Proposed Rule justifies rescinding the rebuttable presumptions by emphasizing a "serious risk of abuse in civil and administrative proceedings" and the possibility that the presumptions could be "used erroneously."[75] But it fails to identify a single example in which such abuse actually occurred. ATF simply concludes, without explanation, that courts may be at risk of using these presumptions to shift the burden of proof, rather than the burden of production, and treats that *possibility* as sufficient justification to rescind existing rules. Indeed, the Proposed Rule acknowledges that these are unsupported assumptions, conceding that it "lacks the data necessary to quantify such savings" from "reduc[ing] the perceived risk of over-enforcement" and that "this proposed rule would not have any quantifiable monetary cost savings."[76] Moreover, ATF fails to acknowledge that rebuttable presumptions are used in the GCA itself, as well as ATF's own implementing regulations, as the 2024 Rule recognized.[77] That same rule also considered the precise burden-

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[73] *Id.* at 29,083 ("When a firearm is recovered in a criminal investigation and submitted for tracing, ATF is often able to identify the last known purchaser through records maintained by the licensee . . . . When a firearm is transferred by an unlicensed person, however, such records rarely exist."); *see also id.* at 28,988.
[74] *See ATF's New Era of Reform*, *supra* note 9 (presenting these proposals as parts of a coordinated reform package).
[75] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,426–27.
[76] *Id.* at 24,432.
[77] 89 Fed. Reg. at 28,976 & n.65.

shifting objection and expressly concluded that the presumptions shift only the burden of production, not persuasion, and do not apply in criminal proceedings.[78] The Proposed Rule never explains why that conclusion was mistaken; it merely hypothesizes that a court might misread the rule. Given that rebuttable presumptions are already baked into the statutory structure, ATF needed to explain why it believes these particular rebuttable presumptions are uniquely susceptible to arbitrary enforcement or misapplication by courts.

The Proposed Rule also justifies rescinding these rebuttable presumptions and the definition of "personal collection" by claiming they are "unnecessary," asserting, without support, that "the statutory definition is readily comprehensible."[79] But ATF identifies no support for its conclusion that these concepts are easily understood, and this finding conflicts with caselaw prior to the 2024 Rule that recognized the inherent difficulty of resolving the fact-intensive nature of the inquiry, as well as the 2024 Rule itself.[80]

The Proposed Rule's finding that the 2024 Rule was ineffective is likewise based on incomplete and flawed evidence. The primary support for this claim is data showing that new applications for Type 01 licenses (Dealer in Firearms Other Than Destructive Devices) decreased from 2021 through 2025, including a decrease from 4,350 applications in fiscal year 2024 when the 2024 Rule took effect to 4,160 applications in fiscal year 2025.[81] But major problems with this evidence undercut ATF's reliance on this data.

First, while there was an overall declining trend in the number of new applications over those years, the downward trend slowed significantly in the two years after the 2024 Rule went into effect.[82] The Proposed Rule does not attempt to identify other possible causes of this downward trend, nor does it give any weight to the fact that the downward trend has slowed. Nor does ATF give any consideration to whether the data supports the obvious contrary conclusion: that more applications have been filed than otherwise would have been absent the 2024 Rule. And this dataset is incomplete in the first place; it does not identify applications from formerly unlicensed sellers, provides no NICS transaction data despite ATF's separate assertion that background checks did not increase, and its total-licensee figures also reflect renewals and departures unrelated to the 2024 Rule.

Second, the Proposed Rule ignores a much more plausible, confounding explanation for the small (but slowing) decrease in the number of Type 01 dealer applications from 2024 to 2025: the 2024 Rule was not fully in effect for most of this time. The 2024 Rule took effect on May 20,

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[78] *See* 27 C.F.R. § 478.13(h); 89 Fed. Reg. at 28,976 & n.65.
[79] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,426.
[80] *See* 89 Fed. Reg. at 29,090–91, 28,971, 28,991; *see, e.g.*, *United States v. Tyson*, 653 F.3d 192, 200–01 (3d Cir. 2011) (outlining six nonexclusive factors relevant to whether a person is engaged in the business of dealing firearms); *United States v. Bailey*, 123 F.3d 1381, 1392 (11th Cir. 1997) ("In determining whether one is engaged in the business of dealing in firearms, the finder of fact must examine the intent of the actor and all circumstances surrounding the acts alleged to constitute engaging in business.") (quoting *United States v. Palmieri*, 21 F.3d 1265, 1268 (3d Cir.), *vacated on other grounds*, 513 U.S. 957 (1994)); *see also United States v. Shipley,* 546 Fed. App'x 450, 456 (5th Cir. 2013).
[81] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,429.
[82] *Id.* at 24,429 (depicting a 4.4% drop in applications from 2024 to 2025, compared to larger drops in earlier years).

2024 but was enjoined by a federal district court on June 11, 2024 as to the States of Texas, Louisiana, Mississippi, and Utah, as well as several associations and their members.[83] In another lawsuit challenging the 2024 Rule brought by twenty states, the district court in July 2024 denied a motion for a TRO and preliminary injunction enjoining the rule.[84] But despite opposing that motion, the federal defendants in February 2025 *agreed* not to enforce the 2024 Rule as to the plaintiffs in exchange for their consent to stay the lawsuit.[85] The total effect is that the 2024 Rule was not enforced in close to half of the States for the vast majority of 2025.

ATF's own decision not to enforce the rule in many States almost certainly affected the effectiveness of the 2024 Rule. (Indeed, ATF suggests that the fact it "has not used the EIB rule's presumptions in civil proceedings[] show[s] they were in fact unnecessary in practice.")[86] Of the twenty-four States where the 2024 Rule was enjoined or not enforced, only one requires background checks for firearms purchases beyond what is required by federal law.[87] Similarly, only one of those States requires all dealers to obtain a state-issued license to sell firearms.[88] In short, these States generally do not regulate the sale and transfer of firearms beyond the requirements of federal law, such that rejecting the 2024 Rule as ineffective without acknowledging the role that the injunction and ATF's own non-enforcement of that very 2024 Rule played ignores an important part of the problem.

D. The Proposed Rule Fails to Consider Reasonable Alternatives.

While the flaws in the Proposed Rule's justifications alone reflect arbitrary decisionmaking, the Proposed Rule further fails to consider reasonable alternatives that could address its purported concerns, as the APA requires. Where there are "significant and viable and obvious alternatives" that address an agency's concerns while reducing the detrimental effects of a change in policy, agencies must give serious consideration to these alternatives and, at a minimum, explain why they were not adopted.[89] Instead, ATF considered only the *procedural* options available to it: taking no action; rulemaking to rescind the provisions entirely; and issuing guidance. But ATF did not consider available substantive alternatives.

Beginning with the "fact-pattern presumptions," the Proposed Rule admits "[t]he presumptions all involved fact patterns from which a fact finder could find that a person was

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[83] *Texas v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 2:24-cv-89-Z, 2024 WL 2967340 (N.D. Tex. June 11, 2024).
[84] *Kansas v. Garland*, No. 24-cv-1086, 2024 WL 3360533 (D. Kan. July 10, 2024).
[85] Notice Regarding Defs.' Mot. to Stay, *Kansas*, No. 24-cv-1086, 2024 WL 3360533 (D. Kan. July 10, 2024) (ECF 225).
[86] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,427.
[87] *Fact Sheet: Update Background Check Laws*, Everytown Rsch. & Pol'y (May 10, 2024), https://everytownresearch.org/report/update-background-check-laws/.
[88] *2026 Everytown Gun Law Rankings: Which States Require All Gun Dealers to Get a State-Issued License*, Everytown Rsch. & Pol'y (Jan. 14, 2026), https://everytownresearch.org/rankings/law/dealer-license-required/.
[89] *Dist. Hosp. Partners, L.P. v. Burwell*, 786 F.3d 46, 59 (D.C. Cir. 2015) (quoting *Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 215 (D.C. Cir. 2013)) (citation modified); *see also City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987) (agency must provide a "reasoned explanation" for rejecting "responsible alternatives").

engaged in the business."[90] That is hardly surprising, since these presumptions were developed from ATF's own long history of enforcement against unlicensed dealers and its review of the caselaw.[91] Even now, ATF does not claim that any of the fact-pattern presumptions are not indicators that a person is engaged in the business of dealing firearms.[92] There is nevertheless no indication that ATF considered alternatives to eliminating the presumptions entirely. ATF asserts a concern that, in enforcement actions, courts or authorities theoretically may misinterpret the 2024 Rule and shift to the defendant the burden of proof rather than merely the burden of producing evidence. Yet ATF failed to consider the option of simply revising the 2024 Rule to expressly clarify that the government bears the ultimate burden of persuasion. Nor did ATF consider the options of modifying the 2024 Rule's fact-pattern presumptions to address the agency's concerns, retaining the fact patterns in the regulation as nonbinding factors or permissive inferences, or refashioning the presumptions as formal guidance. These alternatives would reduce confusion among unlicensed dealers while addressing ATF's stated concerns about theoretically shifting the burden of proof in an enforcement action.

The Proposed Rule also fails to consider whether revised definitions of "personal collection" and/or "former licensee inventory" could adequately resolve its stated concerns while still providing needed clarity.

Those options are within the ambit of the prior policy and still would have promoted clarity for the regulated community. That ATF failed to consider any of these policy alternatives further demonstrates that the agency failed to properly weigh the benefits and costs of its approach including possible alternatives, reflecting arbitrary decisionmaking.

III. The Proposed Rule is Contrary to Law.

Several aspects of the Proposed Rule are also contrary to federal statutes. In particular, the Proposed Rule rescinds paragraph (1) of the 2024 Rule's definition of "personal collection (or personal collection of firearms, or personal firearms collection)"; and rescinds the 2024 Rule's definition of "former licensee inventory" as well as corresponding language in 27 C.F.R. §§ 478.57 and 478.78.[93] Both changes rest on ATF's erroneous legal conclusion that the rescinded provisions conflict with federal statutes, and thus these changes are "arbitrary, capricious, or otherwise not in accordance with law."[94]

First, the Proposed Rule rescinds paragraph (1) of the definition of "personal collection" based entirely on ATF's mistaken view that this language is inconsistent with 18 U.S.C. § 921(a). It argues that this language references the definition of "collector" in § 921(a)(13) but "overreads

[90] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,427.
[91] Definition of ''Engaged in the Business'' as a Dealer in Firearms, 89 Fed. Reg. at 28,977–79, 28,977 nn. 72–84.
[92] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,427.
[93] *Id.* at 24,431–32.
[94] 5 U.S.C. § 706(2)(A); *see Arizona v. Thompson*, 281 F.3d 248, 253–54 (D.C. Cir. 2002) (holding that an agency action is "not in accordance with law" where it rests on agency's erroneous view that its action is "compelled by statute").

section 921(a)(13)," and further criticizes the 2024 Rule's reliance on dictionary definitions of "collection."[95] But this runs into multiple problems.

For one, paragraph 1 in the 2024 Rule's definition of "personal collection" merely incorporates *two* words from section 921's definition of "collector"—"curios" and "relics"—and its use of those words is consistent with section 921. In relevant part, paragraph 1 of the 2024 Rule defines "personal collection" to include "[p]ersonal firearms that a person accumulates for study, comparison, exhibition (e.g., *collecting curios or relics*, or collecting unique firearms to exhibit at gun club events), or for a hobby (e.g., noncommercial, recreational activities for personal enjoyment, such as hunting, skeet, target, or competition shooting, historical re-enactment, or noncommercial firearms safety instruction)."[96] The BCSA, meanwhile, does not define "personal collection," but exempts a person "who makes occasional sales, exchanges, or purchases of firearms for the enhancement of *a personal collection or for a hobby*, or who sells all or part of his *personal collection* of firearms."[97]

As the Proposed Rule acknowledges, that text sets up a basic distinction: a person is "engaged in the business" if they accumulate the firearms for "primarily commercial" uses, as opposed to "personal, noncommercial" uses."[98] Put differently, as the Proposed Rule states, "the function of 'personal collection'" in the BCSA is to exempt firearms a person had accumulated "for personal, noncommercial use."[99] Plainly, "curios or relics" that a person accumulated "for study, comparison [or] exhibition" were obtained not "for profit," but rather "for personal, noncommercial use"—and thus fit the statutory exception. Likewise, the Proposed Rule offers no reason why inclusion of the words "study," "comparison," "exhibition," or "hobby" that appear in dictionary definitions of "collection" conflicts with the BCSA—indeed, "hobby" is right in the statute's exception, which covers firearms obtained "for the enhancement of *a personal collection or for a hobby*."[100]

Further, even if there were some flaw with the 2024 Rule's inclusion of "curios or relics," that in no way justifies rescinding all of paragraph (1) of the "personal collection" definition. The Proposed Rule thus offers no explanation for removing the second sentence of paragraph (1); nor could it, as this tracks the statutory text "to predominantly earn a profit through the repetitive purchase and resale of firearms."[101] Similarly, because ATF's concern is rooted in just a few words in the regulatory definition, it arbitrarily ignored the obvious alternative of simply striking the few offending words, as opposed to the entire definition—an independent reason this change violates the APA. That applies as well to the last sentence of paragraph (1) of the definition, which excludes "firearms accumulated primarily for personal protection" from the definition; again, ATF ignored the alternative of striking only this sentence, which would address its asserted concern that the

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[95] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,429–30 ("ATF now believes that the definitions identified by the EIB rule are too restrictive.").
[96] 27 C.F.R. § 478.11 (emphasis added).
[97] 18 U.S.C. § 921(a)(21)(C) (emphasis added).
[98] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,430.
[99] *Id.*
[100] 18 U.S.C. § 921(a)(21)(C) (emphasis added).
[101] *Id.*

2024 Rule improperly failed to treat firearms obtained "primarily for personal protection" as part of a personal collection.[102]

Second, the Proposed Rule rescinds the definition of "former licensee inventory" and corresponding provisions spelling out the obligations of licensees discontinuing business.[103] As noted, these provisions treat the firearms inventory of a licensee discontinuing business as having been "purchased repetitively" with "the predominant intent to earn a profit," and thus requires the licensee to dispose of its inventory within 30 days, either by selling them to a licensed entity or a transfer to a "responsible person" of the former licensee not prohibited from receiving them.[104] Likewise, the former licensee at that point may not continue engaging in the business of dealing firearms.[105] The Proposed Rule declares that "the effectively permanent restraint on firearms sales after the 30-day period is arguably unlawful," but it again sorely misreads the statute.[106] The rescinded provisions simply operationalize the BCSA's rule: a firearms dealer whose license has been revoked or nonrenewed yet continues regularly selling firearms for profit is "engaged in the business" of firearms dealing—license or no license—and thus remains subject to recordkeeping and background check requirements. The Proposed Rule objects that this sweeps in a former licensee who sells an occasional firearm in a private sale years later, which purportedly would not be covered by the statutory definition.[107] But that is hardly so: the statutory exception applies only to a person who makes "occasional sales, exchanges, or purchases of firearms *for the enhancement of a personal collection or for a hobby*, or who sells all or part of his personal collection of firearms," and the hypothetical former licensee gradually unloading its inventory is not selling firearms as "a hobby" or to enhance "a personal collection." The rescinded provisions simply recognize, consistent with the BCSA, that selling off the inventory even years later does not negate the fact that the firearms were originally "purchased with the predominant intent to earn a profit by repetitive purchase and resale."[108]

Moreover, even assuming that narrow application the Proposed Rule objects to conflicted with the BCSA, ATF offers no justification for jettisoning these provisions in their entirety. Indeed, ATF agrees that numerous applications "are clearly covered by statutory language," such as former licensees who hold "fire sales" of their inventory without conducting background checks. But the rescinded provisions would no longer restrict those scenarios either, with no explanation why. The Proposed Rule thus again arbitrarily ignores the obvious alternatives to rescinding these provisions in whole, including the alternatives of simply extending the disposal period from 30 days to a longer duration or permitting some occasional and isolated sales outside the 30-day window. For that independent reason, the rescission of the "former licensee inventory" definition and corresponding provisions is arbitrary and capricious in violation of the APA.

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[102] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,430.
[103] *Id.* at 24,430–32.
[104] 27 C.F.R. §§ 478.11, 478.57, 478.78(b)–(d).
[105] *Id.*
[106] Revising Regulations Defining ''Engaged in the Business'' as a Dealer in Firearms, 91 Fed. Reg. at 24,430.
[107] *Id.*
[108] 27 C.F.R. § 478.57(b)(2).

The Proposed Rule is arbitrary and capricious and violates the BCSA. And its effects are just as concerning: it will make it easier for prohibited persons to obtain and traffic firearms, and will make it harder for state and local law enforcement to catch them. The States urge ATF to withdraw the Proposed Rule.

Sincerely,

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