August 4, 2026

<u>Via Federal eRulemaking Portal and U.S. Mail</u>

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

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

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

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

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

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

We strongly urge ATF to withdraw the Proposed Rule. The Proposed Rule would, for the first time, define via regulation the *scienter* standard for a willful violation of the Gun Control Act ("GCA") under 18 U.S.C. § 923(e), based on which a federal firearms licensee ("FFL") may have its license revoked. But rather than "clarify" the law or resolve any "regulatory ambiguity"—as ATF claims this Proposed Rule would do—ATF's new definition of willfulness would upend decades of settled law in this area. There is no lack of clarity or regulatory ambiguity here: to the contrary, consistent with the ordinary meaning of "willfully" in the civil context, courts have uniformly interpreted § 923(e) to require a rigorous showing that an FFL acted with purposeful disregard or deliberate indifference of the law, and ATF's longstanding practice has accorded with that well-settled understanding. ATF's proposal to import the criminal standard for willfulness into this civil context is thus contrary to law: ATF cannot override binding appellate precedent via regulation, and ATF's newfound interpretation of § 923(e) is erroneous on its own terms. ATF's proposal is also poorly reasoned because it rests on a mischaracterization of existing law and is wholly unsupported by evidence. In fact, ATF has not identified a single instance of an FFL having its license revoked for so-called inadvertent mistakes or unintentional violations of the GCA.

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

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

I. Statutory and Regulatory Background

A. The Gun Control Act

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

As originally enacted, 18 U.S.C. § 923(e) permitted the Secretary of the Treasury (a function since transferred to the Attorney General) to revoke an FFL's license if the FFL "violate[s]" any provision of the GCA, or regulations promulgated under the GCA. In 1986, Congress amended § 923(e) to permit revocation only if an FFL "willfully violate[s]" the GCA. Pub. L. 99–308, 100 Stat. 449 (May 19, 1986). Neither the statute nor current regulations define "willfully." However, since the GCA was amended, courts have uniformly interpreted § 923(e) to mean that a person acts "willfully" if they know their legal obligation under the GCA and either purposefully disregard it or is plainly indifferent to it. *Simpson v. Attorney General*, 913 F.3d 110, 114 (3d Cir. 2019). The Proposed Rule thus abandons not merely a longstanding agency practice, but the legal interpretation ATF has affirmatively defended in court and applied for forty years.

B. The Proposed Rule

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

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

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

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

Id. (proposed § 478.73(c)(3)).

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

II. The proposed rule would violate the APA.

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

ATF's interpretation of "willfully" is contrary to law and exceeds its statutory authority. Since Congress amended § 923(e) in 1986, the "unanimous view of all the Courts of Appeals to have addressed this issue" is that willfulness requires a showing that a person knows of their legal obligation and purposefully disregarded it or was deliberately indifferent to it, but willfulness does not require a person to have actual knowledge that they are acting unlawfully. *Simpson*, 913 F.3d at 114. ATF's own proposal concedes the point: "All nine of the circuits have held that 'willfulness' for license revocation occurs 'where the licensee knew of his legal obligation and purposefully disregarded or was plainly indifferent to the requirements.'" 91 Fed. Reg. at 25,203. That reading accords with ATF's longstanding interpretation. *See id.* (noting that "both parties in this case agree with [the] willfulness standard" that the court ultimately adopted). And because that "agency interpretation[]" has "remained consistent over time," it is "useful in determining the statute's meaning." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). Congress, moreover, has amended the GCA since those decisions—most recently in the Bipartisan Safer Communities Act, Pub. L. No. 117–159, 136 Stat. 1313 (2022)—without disturbing the courts' uniform construction of § 923(e).

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

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

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

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

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

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

B. The Proposed Rule is arbitrary and capricious.

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

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

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

That framing fundamentally mischaracterizes existing law. ATF implies that willfulness under § 923(e) currently means something akin to mere negligence. To the contrary, every court of appeals to have interpreted § 923(e) has held that revocation requires more than negligence. As described, the settled standard is that willfulness under § 923(e) requires ATF to show that an FFL knew of its legal obligation and either purposefully disregarded it or was plainly indifferent to it. *Simpson*, 913 F.3d at 112. In so doing, courts have explicitly required ATF to show evidence beyond "inadvertent errors or technical mistakes"—*i.e.*, more than "mere negligence"—in order to satisfy the willfulness requirement. *Borchardt Rifle Corp. v. Cook*, 684 F.3d 1037, 1043–44 (10th Cir. 2012). This is a rigorous standard that requires a showing of intent, albeit not the state of mind that would be required to prove criminal guilt.

Similarly, ATF inaccurately characterizes the prior administration's policy[1] as "lowering the bar, in practice, from intentional/reckless wrongdoing to negligence." *Id.* The policy did nothing of the sort. DOJ previously explained that "[l]icensed firearms dealers are often our first line of defense against gun crime and a source of critical enforcement information," but that ATF would seek revocation, absent exceptional circumstances, "for those dealers who **willfully** break the law and put public safety at risk by violating certain ATF requirements."[2] The policy thus addressed the consequence of certain willful violations—and in no way purported to define or change the willfulness standard under § 923(e)—and the Proposed Rule identifies no such language redefining that standard or reducing it to negligence. Nor did that policy target trivial paperwork errors. It applied to willfully transferring a firearm to a prohibited person, failing to conduct a required background check, falsifying records, failing to respond to a trace request, or refusing an ATF inspection.[3] Those violations compromise the core safeguards of the federal licensing system: keeping firearms out of the wrong hands, preserving the records necessary to trace crime guns, and permitting ATF to identify and address unlawful conduct.

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

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[1] Fact Sheet: Biden-Harris Administration Announces Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety (Jun. 23, 2021), https://perma.cc/5KPZ-X6AK ("Zero Tolerance Policy").
[2] DOJ, *Justice Department: Violent Crime Reduction Efforts* 4 (Feb. 9, 2022), https://www.justice.gov/file/1191591/dl?inline (emphasis added).
[3] ATF, Archived Enhanced Regulatory Enforcement Policy page available at https://web.archive.org/web/20250407190454/https://www.atf.gov/rules-and-regulations/enhanced-regulatory-enforcement-policy. ATF has since removed both this explanation and the underlying enforcement data from its website, depriving the public of the very materials needed to test its new characterization—and obscuring that ATF's actual enforcement practices during the prior administration bear little resemblance to the account offered in the Proposed Rule.
[4] ATF Order 5370.1G, Federal Firearms Administrative Action Policy and Procedures (Aug. 29, 2024).

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

2. The Proposed Rule is supported by zero evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATF also failed to consider the States' serious reliance interests in the existing federal enforcement regime. *See DHS v. Regents of the University of California*, 591 U.S. 1, 30 (2020). States have structured their law enforcement systems around the federal licensing, inspection, recordkeeping, and tracing framework, as well as around ATF's longstanding ability to revoke dealers who purposefully disregard or are plainly indifferent to their legal obligations. Massachusetts law, for example, requires law enforcement to trace every firearm used in a criminal act, automatically transmit the resulting data into ATF's federal system, and submit associated cartridge casings to the National Integrated Ballistic Information Network; it also requires local licensing authorities, or the State Police when necessary, to inspect every Massachusetts firearms dealer annually. *See* Mass. Gen. Laws ch. 140, §§ 123(n), 131Q. Those statutory functions depend on accurate dealer records, timely responses to trace requests, and effective federal enforcement—particularly against out-of-state dealers beyond Massachusetts's regulatory authority. In 2024 alone, approximately 64 percent of firearms recovered at crime scenes in the Commonwealth were first sold by dealers outside Massachusetts. See ATF, *Firearms Trace Data: Massachusetts—2024* (July 24, 2025).

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

4. ATF ignored obvious alternatives.

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

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

ATF's analysis of the alternatives that it did consider was also flawed. For example, ATF claims that it considered but rejected the alternative of issuing guidance "due to the differing court interpretations in the absence of an established ATF implementing definition," and that "[c]ourts would not rely on guidance for such an established definition, … and internal guidance would carry no weight" with courts. However, courts also would not rely on ATF's regulation because under *Loper Bright*, they have the obligation to independently interpret the meaning of statutory terms. Also, ATF does not explain what the "differing court interpretations" are here, given that federal courts of appeals have unanimously rejected ATF's proposed definition.

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

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

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

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

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

[7] *See* ATF, New Era of Reform: Modernize (May 12, 2026), https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform/modernize (DOJ/ATF announcement materials describing the package).
[8] NSSF, NSSF Welcomes ATF Landmark Rulemaking Package (Apr. 29, 2026) (stating that the package resulted from "months of NSSF working closely with the ATF and DOJ"); American Suppressor Association, ASA Statement on Nomination of Robert Cekada for ATF Director (Nov. 18, 2025), https://americansuppressorassociation.com/news/asa-statement-on-nomination-of-robert-cekada-for-atf-director (stating that ASA had "worked closely" with then-Deputy Director Cekada "to ensure law-abiding gun owners have a seat at the table in shaping policy"); Nat'l Rifle Ass'n, ATF Announces New Director, Historic Regulatory Overhaul (Apr. 30, 2026), available at https://www.nraila.org/articles/20260430/atf-announces-new-director-historic-regulatory-overhaul; Gun Owners of Am., Here's What GOA Did for Your Gun Rights This Week (May 2, 2026), available at https://www.gunowners.org/na040226/.

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

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

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

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

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

Sincerely,

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