August 4, 2026

Via Federal eRulemaking Portal

Robert Cekada,
Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
c/o: ATF Rulemaking Comments
Mail Stop 6N–518, Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)
99 New York Avenue, NE
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Attn: RIN 1140-AA78

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

Dear ATF Director Cekada,

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

We strongly urge ATF to withdraw the Proposed Rule. Although styled as a clarification, the Proposed Rule would for the first time purport to define by regulation the scope of the federal straw purchasing crimes. That is not a modest restatement of existing law. It is an attempt to narrow criminal statutes that Congress enacted, that the Supreme Court has already construed, and that ATF itself has enforced for decades through Form 4473 and the actual-buyer rule. The Proposed Rule attempts to unravel the careful statutory structure designed by Congress to regulate straw purchases, flouts Supreme Court precedent, undermines the States' ability to investigate and prosecute illegal gun sales, and will expose the States to more gun-related crime. For these reasons, the Proposed Rule exceeds ATF's statutory authority, is contrary to law, and is arbitrary and capricious under the Administrative Procedure Act ("APA").

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

I. Legal Background.

A. Statutory Background.

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

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

[1] *Huddleston v. United States*, 415 U.S. 814, 824 (1974).
[2] *Abramski v. United States*, 573 U.S. 169, 172-173; *see* 18 U.S.C. §§ 922(b)(5), (c), (t), 923(g).
[3] *See id*. §§ 922(b)(5), (c), (t)(1).
[4] *Id.* §§ 922(a)(6), 924(a)(1)(A).

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

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

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

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

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

[7] 91 Fed. Reg. 24,450.

[8] 573 U.S. 169 (2014).

[9] *Id.* at 175.

[10] *Id.* at 175-76.

[11] *Id.* at 171-72, 180.

[12] *Id.* at 181-83.

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

B. The Proposed Rule.

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

II. The Proposed Rule is Contrary to Law.

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

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

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[14] 91 Fed. Reg. 24,450.
[15] *Id.* at 24,453 (reviewing proposed additions to 27 C.F.R. §§ 478.105 (c)(2), (c)(3), (c)(5), (c)(7)).
[16] *Id.*
[17] ATF's 2024 "Engaged in the Business" final rule provides that its regulatory presumptions "shall not apply to any criminal case." 27 C.F.R. § 478.13(h). ATF does not explain the different approach here. *See Grayscale Invs., LLC v. S.E.C.*, 82 F.4th 1239, 1245 (D.C. Cir. 2023) ("A fundamental norm of administrative procedure requires an agency to treat like cases alike." (internal quotation omitted)).
[18] *Abramski*, 573 U.S. at 179–80.
[19] 91 Fed. Reg. 24,451.
[20] *Abramski*, 573 U.S. at 188–90. The Court's "alias" hypothetical is directly on point: even where the true owner is eligible, he "would in any event have made a false statement about who will own the gun, impeding the dealer's ability to carry out its legal responsibilities." *Id.* at 190. Indeed, there are states that do not permit joint registration of a firearm upon purchase, such as California. *See, e.g.*, Cal. Penal Code §§ 28150 (defining "purchaser" to mean "the purchaser or transferee of a firearm or the person being loaned a firearm"), 28160 (for firearm sales transactions, requiring information about the "purchaser," as well as the signature and thumbprint of the "purchaser"), 11106(b)(2) (contemplating a record of one person who owns a firearm).

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

Proposed Section 478.105(c)(2), which would exempt straw purchases made by a parent or guardian for their "minor children," defined as anyone under the age of 21, violates the plain language of Section 922 for the same reason. This exemption also contravenes other provisions of the GCA and ATF's implementing regulations, which define a minor as someone under the age of 18.[22] It also conflicts with the GCA's prohibition on selling handguns to anyone under 21.[23] Nor does the savings clause in proposed Section 478.105(e)(2) cure the defect.[24]

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

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

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

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

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

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

[25] 91 Fed. Reg. 24,453.

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

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

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

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

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

IV. The Proposed Rule is Arbitrary and Capricious.

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

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

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

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

[29] 5 U.S.C. § 706(2)(C).

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

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

[32] *Abramski*, 573 U.S. at 172.

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

2021, and was the second most frequent trafficking channel during this timeframe.[34] By way of example, straw purchasing causes acute harms in the Northeast region, where traffickers from southern States bring guns to northern States along Interstate-95.[35] Regrettably, straw purchasing is also the trafficking channel most often tied to gun violence: nearly 24% of straw purchasing trafficking cases were linked to at least one shooting.[36]

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

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

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[34] ATF, National Firearms Commerce and Trafficking Assessment (NFCTA), Volume III: Firearms Trafficking Investigations, Part III: Firearm Trafficking Channels and Methods Used 1–2 & Table FTC-02 (Apr. 2024) (straw purchasing identified in 3,305 of 8,373 investigations (39.5%), second only to unlicensed dealing at 40.7%; straw-purchasing share rising from 38.1% to 42.6%; straw purchasing accounting for 47.2% of Northeast-region investigations).
[35] ATF, NFCTA, Volume IV: Protecting America from Trafficked Firearms—Part IV: Firearm Trafficking Investigations Updates and New Analysis 10–14 (Jan. 2025) (identifying an East Coast Interstate-95 pipeline whose destination "market states" include Massachusetts; more than 89% (51,140 of 57,282) of crime guns recovered in those market states traced to a purchaser); see ATF, NFCTA, Volume III, Part III, *supra* (Northeast-region trafficking-channel data).
[36] ATF, NFCTA, Volume III: Firearms Trafficking Investigations, Part IX: Investigation Outcomes 5 (Apr. 2024).
[37] 91 Fed. Reg. 24,449.
[38] *Id*. 24,451 (ATF "requests more information from the public regarding the economic effects" of the Proposed Rule). The costs ATF never analyzed include the diversion of firearms the exclusions would facilitate, the handgun age-limit workaround the parental exclusion would create, the effect on straw purchase investigations and prosecutions, and the burden on dealers who must parse the line between an excluded family acquisition and a prohibited-person straw at the point of sale. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency action is arbitrary and capricious where it "entirely failed to consider an important aspect of the problem"); *Michigan v. EPA*, 576 U.S. 743, 752–53 (2015) (same). The Director's certification under the Regulatory Flexibility Act that the rule "will not impose any additional costs," 91 Fed. Reg. 24,452, relies on the same benefit ATF concedes it cannot measure and therefore lacks the "statement providing the factual basis" that 5 U.S.C. § 605(b) requires.
[39] 91 Fed. Reg. 24,451.
[40] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (internal quotation omitted).

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

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

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

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

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

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

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

[45] *See* 91 Fed. Reg. 24,453.

[46] *See supra* notes 35, 37.

[47] *State Farm*, 463 U.S. at 43.

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

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

B. ATF Changed its Prior Position without Justification.

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

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

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

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[49] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (emphasis in original).
[50] ATF, *Don't Lie for the Other Guy*, https://www.atf.gov/firearms/dont-lie-other-guy (stating that ATF has partnered with the National Shooting Sports Foundation for more than 25 years to combat straw purchasing).
[51] ATF Press Release, *ATF and NSSF Celebrate 25 Years of Partnership with the 'Don't Lie for the Other Guy' Anti-Straw Purchasing Campaign* (Sept. 15, 2025), https://www.atf.gov/news/press-releases/atf-and-nssf-celebrate-25-years-partnership-dont-lie-other-guy-anti-straw-purchasing-campaign.
[52] ATF, Don't Lie for the Other Guy, *supra* note 50.
[53] *Id.*
[54] 91 Fed. Reg. 24,451.

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

ATF is currently engaged in a massive rulemaking endeavor. The Proposed Rule is one of thirty-four Proposed and Final Rules ATF announced in May 2026.[55] Although many of these Rules seek to regulate interdependent parts of ATF's regulatory scheme, ATF has chosen to announce each Rule in isolation.

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

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

Even putting aside this problematic segregation of interrelated rulemakings, this Proposed Rule suffers from additional procedural defects. Because ATF maintains that it is restating the law, rather than acknowledging how it is rewriting it, the Proposed Rule does not meaningfully account for the Proposed Rule's impact. ATF should not have determined the Proposed Rule was "not a significant regulatory action" under Executive Order 12,866,[60] when it is clear the Rule meets that definition because it is likely to "adversely affect in a material way" public health and safety, and the States' ability to govern.[61] ATF was wrong to claim that the Proposed Rule "would not create a criminal regulatory offense,"[62] when it in fact does so, by redefining what conduct is subject to federal criminal enforcement under Sections 922(a)(6), 924(a)(1)(A), and 932.[63] In the same vein, ATF improperly claimed that the Proposed Rule "will not have substantial direct effects on the states" and therefore does not "meaningfully implicate federalism."[64] ATF's finding under the Paperwork Reduction Act that the Rule "would not create any new information collection requirements or impact any existing ones" is equally untenable.[65]

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[55] Since May 2026, ATF has published additional proposals as part of this same package. *See* ATF, *New Era of Reform* (May 12, 2026), *available at* https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform.
[56] *State Farm*, 463 U.S. at 43; *see Michigan v. E.P.A.*, 576 U.S. 743, 752–53 (2015); *Bus. Roundtable v. S.E.C.*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011).
[57] *Grayscale Invs*, 82 F.4th at 1245.
[58] *See* 91 FR 25,439 – 25,440.
[59] *State Farm*, 463 U.S. at 43.
[60] 91 Fed. Reg. 24,451.
[61] Exec. Order No. 12,866 § 3(f); 58 Fed. Reg. 51,735 (Oct. 4, 1993).
[62] 91 Fed. Reg. 24,451 (Executive Order 14,294 discussion); Exec. Order No. 14,294, Fighting Overcriminalization in Federal Regulations, 90 Fed. Reg. 20,363 (May 14, 2025).
[63] *See* 91 Fed. Reg. 24,450–51.
[64] *Id.* 24,451–52.
[65] *Id*. 24,452.

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

Conclusion

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

Sincerely,

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

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

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

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