August 6, 2026

Via Federal eRulemaking Portal

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: RIN 1140-AB05

Re: Multistate Comment Letter on Revising Non-over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. 25216 (May 8, 2026), Docket No. ATF-2026-0266; ATF 2025R-26P, RIN 1140-AB05

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 proposal.[1] The Proposed Rule is contrary to law in at least three ways. The Proposed Rule is arbitrary and capricious, failing to properly consider its tremendous public-safety harms. And it suffers from procedural flaws to boot. ATF should withdraw it.

The States object to the Proposed Rule because, if adopted, it would dramatically expand the online gun market in a way that endangers public safety. States bear primary responsibility for protecting the health and safety of the public and have a substantial interest in preventing illegal gun sales. ATF estimates that its Proposed Rule will result in 3.28 million more non-over-the-

[1] Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. 25,216 (May 8, 2026) (Proposed Rule).

counter (NOTC) purchasers per year, including online shoppers.[2] And the Proposed Rule achieves that result by adopting an unprecedented and erroneous interpretation of the Gun Control Act (GCA). ATF asserts that this historic law a) permits NOTC sales by federal firearms licensees (FFLs) to unlicensed persons subject to federal firearms background checks, and b) that FFLs may "verify" the identities of such gun purchasers remotely. The Proposed Rule would eliminate the requirement for a purchaser to appear in-person for more gun sales than ever before, effectively making NOTC sales an option for *all* gun sales, absent relevant state law. But doing away with in-person requirements for gun sales will have disastrous consequences, by making it more difficult for FFLs to detect suspicious behaviors, warning signs, and other "red flags" that indicate a sale should not be made, including to a potential straw purchaser. And the Proposed Rule's system for verifying identity without a physical examination of identity documents will create more opportunities for prohibited persons to illegally obtain firearms.

These radical changes would be unlawful, because the Proposed Rule is both contrary to law and arbitrary and capricious under the Administrative Procedure Act (APA). First, the Proposed Rule conflicts with the text of the GCA, the case law interpreting it, and the GCA's legislative history, all of which establish that most gun sales must occur in-person, that NOTC sales are only permitted in limited circumstances, and that identification verification is required to occur in-person at the FFL's premises—all requirements Congress adopted in its statutes to protect public safety. Second, the Proposed Rule also fails to consider the myriad of public safety issues it creates by dramatically expanding NOTC sales, including increased opportunities for straw purchasing, unlicensed dealing, and gun trafficking.

The Proposed Rule's problems are compounded when read in the context of ATF's larger deregulatory package.[3] By separating these interlocking changes, ATF mischaracterizes each as individual, narrow, incremental, and/or administratively modest. But these proposals do not operate in isolation, and the public safety impact is magnified by the combined effect of weakening multiple regulations at the same time. So the Proposed Rule's facilitation of online gun sales must also be considered in the context of the Administration's efforts to permit the mailing of firearms through the Postal Service,[4] narrow federal criminal straw purchasing statutes,[5] heighten the standard for proving culpability for violations of the GCA by FFLs,[6] eliminate physical address requirements for identification documents for firearms purchases,[7] and other Proposed Rules.[8]

The collective impact of these changes would be extremely consequential: millions of guns could be purchased online and mailed to Americans' doorsteps, circumventing *any* in-person identification verification or interaction with an FFL, and state gun safety laws. That would

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[2] *Id.* at 25222. ATF estimates the resulting "number of applicable retail purchases would be 1.96 million [per year]." *Id.* at 25224.

[3] *DOJ and ATF Announce Regulatory Reforms to Reduce Burdens on Law-Abiding Gun Owners and Businesses,* U.S. Dep't of Justice, (Apr. 29, 2026), www.justice.gov/opa/pr/doj-and-atf-announce-regulatory-reforms-reduce-burdens-law-abiding-gun-owners-and-businesses.

[4] Revised Mailing Standards for Firearms, 91 Fed. Reg. 16,601 (Apr. 2, 2026).

[5] Firearms Transactions and Straw Purchases, 91 Fed. Reg. 24,448 (May 6, 2026).

[6] Defining "Willfully" for Firearms Violations, 91 Fed. Reg. 25,201 (May 8, 2026).

[7] Revising Firearms Transaction Record, "Form 4473," 91 Fed. Reg. 25,432 (May 8, 2026).

[8] *ATF's New Era of Reform*, ATF, https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform. (last updated May 12, 2026).

fundamentally undermine the federal laws DOJ and ATF are charged to enforce, would endanger the public and law enforcement by fueling gun trafficking, and would impose significant law enforcement costs on the States. Acting Attorney General Blanche himself has admitted that Federal Government intends for these changes to usher in a "new era," which will take the "gun industry […] forward a mile."[9] But these Proposed Rules would take our country dangerously backwards, to the previous levels of violence that motivated Congress to pass the GCA and other federal gun safety laws.

The States urge ATF to withdraw this Proposed Rule. Any changes to how firearm sales can be made must strengthen, not diminish, existing safeguards that protect public safety. That means, at minimum, continuing to require in-person sales and in-person verification of identity by physical examination of identification documents. Public safety requires no less.

I. BACKGROUND.

A. The Gun Control Act of 1968, the Brady Handgun Violence Prevention Act of 1993, and the Bipartisan Safer Communities Act of 2022.

Congress has repeatedly passed bipartisan legislation to combat the very problem that ATF's Proposed Rule would worsen: the illegal distribution of firearms to dangerous persons. The GCA Act of 1968[10] was enacted to aid federal, state, and local law enforcement in "their fight against crime and violence,"[11] and in particular, to address the pervasive problem of interstate firearms trafficking.[12] 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."[13] Congress also sought to curtail the practice of mail-ordered firearms, which was identified as a key mechanism for the illegal acquisition of firearms and their involvement in violent crime.[14] Early in the GCA's history, a committee chaired by its primary sponsor, Senator Thomas Dodd, conducted a "full-scale inquiry" into mail-order guns, revealing that "criminals, immature juveniles, and other irresponsible persons" used the mail-order system

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[9] *Acting U.S. Attorney General Todd Blanche Outlines Sweeping Second Amendment Overhaul at Trump DOJ*, DealerWire (Apr. 24, 2026), https://www.thedealerwire.com/features/2026/04/acting-us-attorney-general-todd-blanche-outlines-sweeping-second-amendment-overhaul-at-trump-doj/.
[10] Pub. L. No. 90-618, 82 Stat. 1213 (1968).
[11] *Id.* § 101, 82 Stat. at 1213.
[12] *Huddleston v. United States*, 415 U.S. 814, 824 (1974) (describing Congress' intent to address the significant role that interstate firearms trafficking plays in contributing to "lawlessness and violent crime in the United States").
[13] *Mance v. Sessions*, 896 F.3d 699, 705–06 (5th Cir. 2018) (citing Congress' findings in the GCA and the Crime Control Act of 1968); *see also Navegar, Inc. v. United States*, 192 F.3d 1050, 1063 (D.C. Cir. 1999) (describing "the widely accepted knowledge that there is a vast interstate market in firearms that makes the states unable to control the flow of firearms across their borders or to prevent the crime inevitably attendant to the possession of such weapons once inside their borders").
[14] Franklin E. Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, 4 J. Legal Stud. 133, 144–49 (1975).

to obtain firearms in violation of their own local jurisdictions' rules.[15] The GCA took on added urgency and significance after the assassination of President John F. Kennedy in 1963 with a mail-order surplus military rifle, leading to its bipartisan passage in 1968.[16]

Key provisions of the GCA, codified at 18 U.S.C. § 922 *et seq.,* included a prohibition on dealers' interstate mail-order firearm sales and tight restrictions on intrastate mail order sales.[17] The GCA also expanded the list of classes of persons prohibited from gun ownership, prohibiting the sale of guns to minors, felons, drug users, and people found mentally incompetent.[18] Initially, dealers were only required to verify their customers' ages via document inspection,[19] and could simply take their customer's word that they had no criminal history or mental condition that would make the transfer illegal. In practice, this honor system permitted felons and other prohibited individuals to walk into a store, lie, and walk out with as many firearms as they could buy.[20]

Congress closed this loophole in its next major firearm reform, the Brady Handgun Violence Prevention Act of 1993.[21] Motivated by another presidential assassination attempt, the bipartisan Brady Act created the National Instant Criminal Background Check System (NICS) and imposed a mandatory five-day waiting period between the application to purchase a firearm and the time that the purchase actually transpired.[22] Congress intended for the NICS system to prevent convicted felons and other prohibited persons from purchasing firearms through licensed dealers.[23] Although the Brady Act permitted some narrow exceptions to the requirement for a NICS check, such as individuals who possess a NICS-alternative state permit,[24] the overall statutory framework created by GCA and the Brady Act's amendments established a mandatory nationwide standard that requires stringent verification of the purchaser's identity and eligibility under federal law.[25] Accurate identification verification was critical to this statutory scheme, because "[n]o piece of information is more important under federal firearms law than the identity of a gun's purchaser."[26] In 2022, Congress further strengthened the GCA by passing the Bipartisan Safer Communities Act ("BSCA"), which amended the law to more explicitly prohibit straw purchases and illegal gun trafficking.[27]

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[15] *Id.* at 145 (quoting Thomas Dodd, Federal Firearms Legislation, 1961-1968, at 10 (unpublished report prepared for the Subcomm. to Investigate Juvenile Delinquency of the S. Comm. on the Judiciary, 90th Cong., 2d Sess., 1968)).
[16] *See* William J. Vizzard, *The Gun Control Act of 1968*, 18 Saint Louis Univ. Pub. L. Rev. 79, 8080 (1999).
[17] *See id.* at 87–88; 18 U.S.C. §§ 922(b)(1)-(3), 922(c) (1970).
[18] *See* Vizzard, *supra* note 16, at 88; 18 U.S.C. § 922(d)(3) (1970).
[19] *See* Zimring, *supra* note 14, at 152; Treas. Reg. § 178.124(c) (1968).
[20] *See id.* at 152.
[21] Pub. L. No. 103-159, 107 Stat. 1536 (1993).
[22] Richard M. Aborn, *The Battle Over the Brady Bill and the Future of Gun Control Advocacy*, 22 Fordham Urban L.J. 417, 418–19 (1995); 18 U.S.C. § 922 (s)–(t) (1993).
[23] *See* Aborn, *supra* note 22 at 418–419, 428.
[24] 18 U.S.C. § 922 (t)(3)(A) (1993). The NICS-alternative state permit system is the subject of another NPRM that would significantly broaden that exception. *See* Clarifying Exceptions to the Brady Act Background Check Requirement, 91 Fed. Reg. 24,436 (May 6, 2026). The States have written separately to object to that NPRM and explain the risks it presents to public safety.
[25] *Abramski v. United States*, 573 U.S. 169, 171–175, 181 (2014) (Congress intended to "curb crime by keeping firearms out of the hands of those not legally entitled to possess them.").
[26] *Id.* at 193.
[27] *See* Jordan B. Cohen, Cong. Rsch. Serv., IF12190, *Gun Control: Straw Purchase and Gun Trafficking Provisions in P.L. 117-159,* 1, (Feb. 9, 2024), https://www.congress.gov/crs-product/IF12190; 18 U.S.C. §§ 932–933.

B. The Proposed Rule.

The Proposed Rule significantly expands the ability of FFLs to sell firearms to a person residing in the same state as the FFL but who does not appear in person, which are referred to as "non-over-the-counter" sales.

Previously, NOTC sales were restricted to sales or transfers that were background check-exempt (NICS-exempt transfers), such as when a transferee has a qualifying permit or license.[28] ATF would "eliminat[e] the NICS-exempt transfer restriction for NOTC transfers."[29] As a result, the Proposed Rule would permit NOTC transfers even to *unlicensed* persons subject to NICS background checks for the first time, by also permitting remote identity verification and electronic notices to chief law enforcement officers.[30] In doing so, the Proposed Rule effectively makes NOTC sales an option for *all* gun sales, absent relevant state law.

ATF acknowledges that NOTC transfers must be "not otherwise prohibited by this chapter" under § 922(c) of the GCA.[31] It also recognizes § 922(t) prohibits FFLs from "transferring a firearm to an unlicensed person without running a NICS background check and *verifying* the transferee's identity by examining a valid identification document."[32] However, ATF now asserts that "[w]hile section 922(t) requires the FFL to verify the transferee's identity document, *that subsection does not require that an FFL verify the identity document only when a transferee is physically present at the FFL's place of business*."[33] Thus, ATF advances an entirely new interpretation of the GCA in which identity documents can be "verified" by FFLs in fully remote fashion, without any in-person examination by the FFL.

The Proposed Rule then provides certain criteria to remotely verify transferee identity,[34] although—notably—ATF is also proposing to remove the requirement that transferees' identification documents actually include their residence address.[35] ATF proposes that FFLs will use a credential service provider (CSP) that remotely verifies the transferee's identity by collecting their attribute information and identity evidence and validating it using a range of methods.[36] FFLs would then apparently use the information collected by the CSP and compare the identification document during a remote videoconferencing session to initiate a NICS background check.[37] FFLs would be responsible for ensuring any third parties they engage for remote identity proofing would apply the Proposed Rule's standards,[38] although the basis for this "responsibility" is unclear from

[28] 18 U.S.C. § 922(t)(3); 27 C.F.R. 478.102(d).
[29] Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25,218.
[30] *See id.* at 25,216.
[31] *Id.* at 25,217.
[32] *Id.* at 25,218 (emphasis added).
[33] *Id.* (emphasis added). According to ATF, "[n]othing in the statute prevents transfers that do require identity verification and a NICS background check from being included within the ambit of section 922(c) NOTC procedures." *Id.*
[34] *See id.* at 25,218–20.
[35] *See id.* at 25,217 n. 2. *See* Revising Firearms Transaction Record, "Form 4473," 91 Fed. Reg. at 25,438.
[36] *See* Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25218–20.
[37] *See id.* at 25219–20.
[38] *See id.* at 25220.

the Proposed Rule and ATF could not even determine if there were CSPs in existence that provide services in accordance with its requirements.[39]

II. THE PROPOSED RULE IS CONTRARY TO LAW.

The Proposed Rule exceeds DOJ and ATF's statutory authority and is contrary to law[40] for three inter-connected reasons. First, ATF's dramatic expansion of NOTC sales for all firearm sales conflicts with the statute, which "tightly restricts"[41] these sales to "limited circumstances"[42] for a "small class of buyers subject to extraordinary procedures."[43] Second, the plain text, case law, and subsequent legislative history all show that the GCA's "verified"[44] provision requires in-person verification and examination of documents, and prohibits remote identity verification. Third, ATF's interpretation of the phrase "not otherwise prohibited"[45] as permitting transfers subject to NICS requirements is also contrary to law. Simply put, a transaction which fails to meet the statutory requirements for "verification" is necessarily "otherwise prohibited." As a result, the Proposed Rule is contrary to law under the APA. ATF should withdraw it.

A. The Proposed Rule's Expansion of NOTC Sales to Purchasers Subject to NICS Background Checks Conflicts with the GCA.

Despite decades of restricting NOTC sales to a narrow set of circumstances, ATF now concludes that, contrary to ample prior precedent, the "plain language of section 922(c) [of the GCA] does not limit NOTC [sales] to NICS exempt transfers."[46] As a result, the Proposed Rule would effectively make NOTC sales an option for *all* gun sales, absent relevant state law, leading to a projected increase of 3.28 million NOTC purchasers per year.[47] By doing so, ATF would invert the law enacted by Congress by converting NOTC sales from a narrow exception for certain buyers (as set forth in the GCA) to one available for all gun sales. Such an interpretation is contrary to law.

Federal law generally prohibits FFLs from selling firearms to individuals who do not appear in person at the FFL's business premises. This in-person requirement ensures FFLs can verify the identity of the purchaser, as required by the GCA.[48] Separately, federal law prohibits FFLs from selling a firearm to someone "knowing or having reasonable cause to believe that such person" cannot lawfully possess a firearm or intends to commit a felony with that firearm.[49] So the in-person requirement also allows FFLs to observe suspicious behavior that may indicate criminal intent (such as intent to make a straw purchase) and to identify warning signs that someone may

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[39] *See id.* at 25224.
[40] 5 U.S.C. §§ 706(2)(a), (c). Since *Loper Bright Enterprises v. Raimondo*, courts no longer give agencies deference regarding matters of statutory interpretation; they "exercise independent judgment" and determine the "best" statutory interpretation. 603 U.S. 369, 394, 400 (2024).
[41] *Abramski v. United States*, 573 U.S. 169, 181 (2014)
[42] *Id.* at 172.
[43] *Id.* at 182.
[44] 18 U.S.C. § 922(t)(1)(D).
[45] 18 U.S.C. § 922(c).
[46] Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25,217.
[47] *Id.* at 25222.
[48] 18 U.S.C. § 922(t)(1)(D).
[49] 18 U.S.C. § 922(d).

be a danger to themselves or others (such as a purchaser experiencing a mental health crisis or who is under the influence of drugs or alcohol). Based on their observations during this in-person touchpoint, FFLs assess whether they can lawfully sell to a prospective purchaser. The in-person requirement, therefore, provides a critical tool in keeping firearms out of the hands of dangerous individuals or those seeking to commit crime. This important role is why ATF Director Robert Cekada recently stated that "FFLs are our first line of defense in the fight against firearms trafficking."[50]

The Supreme Court has made clear that ATF's long-standing position that *in-person* purchases are the general rule under the GCA is the correct interpretation of federal law. In *Abramski v. United States*, the Court reviewed the legality of a conviction under 18 U.S.C. § 922(a)(6) of a former police officer who was paid to purchase a gun for his uncle.[51] The Court read § 922(c) and § 922(t)(1)(C)'s identification requirement as two provisions within the same "detailed scheme to enable the dealer to verify, *at the point of sale*, whether a potential buyer may lawfully own a gun."[52] The Court noted that § 922(c) "brings the would-be purchaser *onto the dealer's 'business premises'*"[53] and "[o]ther provisions *then* require the dealer to check and make use of certain identifying information received from the buyer."[54] The Court's interpretation of the statute could not be more clear: firearm purchases under the GCA almost always must occur in-person.

There is a limited exception to the in-person requirement for firearm sales, but federal law makes clear that it is very narrow in scope, tightly restricting such sales to a small class of buyers subject to extraordinary procedures. § 922(c) describes the conditions under which FFLs may make NOTC sales.[55] Federal law and current regulations limit NOTC sales to purchasers who are (1) residents of the same state in which the FFL's business premises are located; and (2) who are exempt from the federal background check requirement (i.e. NICS exempt transfers), such as purchasers with qualified state firearms permits.[56] The Court in *Abramski* noted that § 922(c)

[50] Robert Cekada, Responses to Questions for the Record, S. Comm. on the Judiciary Nominations Hearing, 9 (Feb. 2026), https://www.judiciary.senate.gov/imo/media/doc/3502d997-daa5-f550-7914-e7d18cc5b59b/2026-02-04_QFR-Responses_Cekada.pdf.
[51] 573 U.S. 169, 175 (2014).
[52] *Id.* at 172 (emphasis added).
[53] *Id.* (emphasis added)
[54] *Id.* (*citing* § 922(t)(1)(C)) (emphasis added). The dissent agreed that "Sections 922(b)(5), (c), and (t)(1) require the dealer to follow certain procedures with respect to that 'person [seeking to purchase a firearm],' such as recording his name, *dealing with him in person*, and checking his background." *Id.* at 196, n. 1 (emphasis added).
[55] These conditions include: (1) the purchaser submits a sworn statement to the FFL attesting certain information specified in 18 U.S.C. § 922(c)(1); (2) the FFL (prior to shipment or delivery of the firearm) forwards a copy of the sworn statement and a description of the firearm to the chief law enforcement officer of the jurisdiction in which the purchaser resides (and receives return receipt); and (3) the FFL waits at least 7 days following receipt of the notification of the acceptance or refusal of delivery of the statement before shipping or delivering the firearm to the purchaser. *See also Abramski*, 573 U.S. at 181 –182.
[56] 27 CFR § 478.96 limits the option for NOTC transactions to only those persons who are not subject to § 478.102(a). 478.102(a)(5) requires an FFL to verify the identity of an unlicensed transferee by examining a valid identification document and to contact the NICS for a background check prior to transferring a firearm. 18 U.S.C. 922(t)(3) and its implementing regulation at 27 CFR 478.102(d) allow exceptions (NICS-exempt transfers) to conducting a NICS background check if: (1) the transferee has a qualifying permit or license; (2) the transaction involves only transferring National Firearms Act ("NFA") firearms as approved by the Director; or (3) the Director has certified that running a NICS background check is impracticable.

permits certain firearm sales "to a person who does not appear in person," but only in "limited circumstances."[57] In fact, the Court found that "the point of § 922(c)" is that it "*tightly restricts* the sale of guns 'to a person who does not appear in person at the licensee's business premises.'"[58] That is, "[o]nly a *narrow class* of prospective buyers may ever purchase a gun from afar—primarily, individuals who have *already* had their eligibility to own a firearm verified by state law enforcement officials with access to the NICS database."[59] For instance, the Court noted that "[t]he principal exception [to the NICS background check requirement] is for any buyer who has a state permit that has been 'issued only after an authorized government official has verified' the buyer's eligibility to own a gun under both federal and state law."[60] As a result, the Court made clear that § 922(c) "*prevents remote sales except to a small class of buyers subject to extraordinary procedures*—again, to ensure effective verification of a potential purchaser's eligibility."[61]

ATF has proposed an interpretation of the GCA directly at odds with, and foreclosed by, *Abramski*. The Proposed Rule would permit NOTC transfers to unlicensed persons subject to NICS background checks, effectively making NOTC sales an option for all gun sales, absent relevant state law. That contradicts the Supreme Court's recognition that NOTC sales are only permitted in "limited circumstances" for a "narrow" and "small" class of buyers.[62] Under binding precedent, only a small group of buyers are actually eligible for NOTC sales, primarily those who had *already* had their eligibility to purchase a firearm determined. The Proposed Rule would expand NOTC sales for individuals who *still* require NICS background checks.

The Court in *Abramski* also specifically foreclosed the possibility that identification verification and background checks could occur remotely for an "absentee" purchaser under the statute. For instance, the Court pointed out that even if the sale in the case had been made directly to the intended recipient (an eligible gun owner), rather than to the physically present straw purchaser, the sale would still "not have complied with § 922(c)'s restrictions on *absentee* purchases."[63] The Court noted that for such an absentee purchaser, the dealer would have "lacked the information needed to verify and record" the purchaser's "identity and check his background."[64] Consequently, the FFL in such a circumstance would have needed to stop the transaction for failure to comply with § 922(c)'s conditions.[65] Thus, the Court's reasoning leaves no room for the kind of remote identification verification and background checks for "absentee" purchasers that the Proposed Rule now seeks to implement.[66]

The Proposed Rule's broad expansion of NOTC sales cannot be reconciled with *Abramski*'s explanation that such sales are tightly restricted to a small class of buyers whose eligibility to purchase firearms has already been determined. And *Abramski* ruled out a sale to an absentee purchaser based on § 922(c)'s restrictions. If ATF wishes to revise the GCA to more

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[57] *Id.* at 172.
[58] *Id.* at 181 (emphasis added) (internal citation omitted).
[59] *Id.* at 181 (citing 27 C.F.R. § 478.96(b) (2014); 18 U.S.C. § 922(t)(3)) (emphasis added).
[60] *Id.* at 172 – 173, n. 1 (*citing* 18 U.S.C. § 922(t)(3)).
[61] *Id.* at 182 (emphasis added).
[62] *Id.* at 181 – 182.
[63] *Id.* at 189 (emphasis added).
[64] *Id.*
[65] *Id.*
[66] *Id.*

broadly permit NOTC sales, it is free to encourage Congress to pass new laws to do so. But it is not free to ignore GCA's language in a way that is contrary to law under the APA, by advancing a reading in a proposed rule that contradicts the GCA's text, structure, history, and Supreme Court precedent.

B. The GCA Requires In-Person Identification Verification at an FFL's Premises and Excludes the Proposed Rule's Remote Identity Proofing Process.

The Proposed Rule violates the GCA's identification verification provisions, by allowing FFLs to (1) conduct such identification verification remotely by videoconference, and (2) largely outsource this responsibility to CSPs.[67] The GCA's text, the case law interpreting that text, and the legislative context of such text all confirm that the GCA requires in-person identification verification at an FFL's premises. ATF's interpretation of "verified" as permitting a remote identity proofing process is erroneous and contrary to law.

The plain text of § 922(t)(1) requires in-person identification verification and excludes remote videoconferencing as a substitute. The section states:

> a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless— [the Act lists various requirements, including:]
>
> (D) the *transferor* has *verified* the identity of the transferee by *examining* a *valid identification document* (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.[68]

Thus, the statute places the burden on the (1) "transferor" to (2) "verif[y]" the identity of the transferee by (3) "examining" their "valid" "identification document." These terms collectively create a heightened standard for verification that is aligned with the in-person procedures envisioned by the statute—but conflict with the remote identity proofing described by the Proposed Rule.

Although § 922(t)(1)(D) places the responsibility for verification on the "transferor," i.e., the FFL, the Proposed Rule unlawfully shifts this critical responsibility away from FFLs to third-party CSP subcontractors. Congress explicitly required that the *transferor* must be the one doing the verification, not a third-party CSP. This is made even clearer by the fact that the Brady Act holds FFLs liable if their processes fail.[69] CSPs are not contemplated, let alone regulated, by the

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[67] *See* Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25,228 (proposing amendments to 27 CFR § 478.96, namely the proposed new § 478.96(3)–(4)).
[68] 18 U.S.C. § 922(t)(1) (emphasis added).
[69] *See* 18 U.S.C. 923(e) (revoking the license of a transferor who violates any provision of the chapter); 18 U.S.C. 924(a)(5) (making it a misdemeanor offense to violate 18 U.S.C. § 922, punishable by fines and up to a year of imprisonment.); *see also* 27 CFR 478.73(a) (revoking or suspending the license of, or imposing a civil fine on, a transferor who violates 18 U.S.C. § 922).

GCA, so shifting responsibility to CSPs makes it easier for FFLs to evade responsibility even if a CSP mistakes a transferee's identity and a firearm goes to a prohibited person.[70]

In addition, § 922(t)(1)(D)'s remaining requirements that FFLs "verif[y]" the identity of the transferee by "examining" their "valid" "identification document" impose a heightened standard of certainty for confirming authenticity. Dictionary definitions of "verified" from the time of the Brady Act's passage emphasized the high level of certainty the verifier must have to confirm authenticity, essentially equivalent to the certainty one could attest to by legal oath. For instance, Black's Law Dictionary wrote that "[t]he word 'verified,' when used in a statute, ordinarily imports a verity attested by the sanctity of an oath."[71] Similarly, the Oxford English Dictionary defined "verify" as "to prove by good evidence or valid testimony," or "to show to be true by demonstration or evidence; to confirm the truth or authenticity of."[72] In Webster's Dictionary, "verify" meant "to prove to be true: establish the truth of : conclusively demonstrate by presentation of facts."[73] Similarly, "examination" was defined as "investigation; search; inspection; interrogation,"[74] requiring a rigorous review of the items at issue to confirm they are "valid" or authentic.

Allowing identity to be verified by videoconference does not meet § 922(t)(1)(D)'s high standard of certainty for confirming authenticity. Videoconferencing varies widely in its quality and accessibility, especially in areas with poor access to the internet.[75] If a would-be purchaser's video feed is choppy, grainy, poorly lit, or flawed in any number of other ways, it may be difficult to compare the person on the screen to the person on the identification document. Furthermore, many state drivers' licenses have built-in ID security features like holograms[76] or pearlescent design overlays[77] which are difficult or impossible to forge. But videoconferencing makes it difficult to detect such features, making the risk of an FFL being deceived by a forged or otherwise invalid identification document significantly higher. Firearms purchasers could also take advantage of artificial intelligence to falsify their appearance on a videoconference, as described *infra* at 15. Clearly, the proposed remote identification verification process has multiple problems

[70] This issue would be exacerbated by another proposed rule from ATF, *see* supra note 6, that would heighten the standard of culpability for FFLs by modifying the definition of "willfully" for violating dealers. This is one of many examples demonstrating that these proposed rules are highly interconnected even though ATF advances them as separate proposals, and that their public safety impact can only be fully assessed in totality.
[71] *Verify*, BLACK'S LAW DICTIONARY (6th ed. 1990). In other contexts, "verify" imposes similarly high demands: "[t]o prove to be true," "to confirm or establish the truth or truthfulness of," or "to confirm or establish the authenticity of; to authenticate." *Id*.
[72] *Verify*, OXFORD ENGLISH DICTIONARY (2d ed., 1989).
[73] *Verify*, WEBSTER'S THIRD INTERNATIONAL DICTIONARY (6th ed. 1993).
[74] *Examination*, BLACK'S LAW DICTIONARY (6th ed. 1990).
[75] *See generally* Ashton Cain et al., *A Snapshot of Broadband Access in Rural Communities,* OPRE 3 (Dec. 2022), https://acf.gov/sites/default/files/documents/opre/broadband_special_topic_brief_jan2023.pdf (highlighting various areas with "poor access to internet").
[76] These include Alaska, Arkansas, Delaware, Florida, Georgia, Hawaii, Idaho, Maryland, Mississippi, New Hampshire, New Jersey, New York, Rhode Island, South Carolina, Texas, and Wyoming. Hannah Ligon, *Which States Have Holograms as a Security Feature on their ID?,* IDSCAN.NET (Apr. 11, 2024). https://idscan.net/blog/which-states-have-holograms-as-a-security-feature-on-their-id/?srsltid=AfmBOorJxpfgGhXl-gYPvY0c3rtcF20zDoxAEEzFpw-3NqWACSsBwoSt.
[77] These include Alabama, Arizona, California, Connecticut, Georgia, Illinois, Louisiana, Michigan, Minnesota, Nevada, New Mexico, Ohio, Pennsylvania, Washington, and Wisconsin. *Id.*

that do not exist with in-person verification, confirming that videoconferencing falls far below the standard demanded by the plain text of the statute.[78]

ATF's Proposed Rule is also unlawful because it is an end-run around the Brady Act's exception for buyers in very remote areas. Specifically, Congress enacted § 922(t)(3)(c), which grants the Attorney General the ability to exempt enumerated remote buyers from the NICS and ID verification requirements imposed by § 922(t)(1), providing that:

> [(3) § 922(t)(1) shall not apply to a firearm transfer between a licensee and another person if] on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025; (ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and (iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.[79]

This section explicitly allows enumerated remote transferees to be excused from the NICS and identification verification requirements, but only if the Attorney General has certified the impossibility of compliance. This reflects that Congress knew how to make exceptions to the law's requirements, but chose to carefully limit such exceptions. So under the *expressio unius* principle, interpreting § 922(t)(1)(D) to make remote identification the norm rather than a narrow, fact-specific exception, would improperly rewrite the statute.

Lastly, legislative history also confirms that Congress envisioned that § 922's identification verification and background check provisions would necessarily involve the physical presence of the would-be buyer. During the final floor debate over the House version of the bill, both supporters and opponents of the bill referenced the provisions in § 922(t) as applying to in-person firearm transactions. For instance, one cosponsor stated that "[t]he Brady bill will enable us to run a background check [w]hen someone walks to a gun shop."[80] Another cosponsor described the bill's

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[78] The ATF notes in its proposed rule that several federal agencies, including the National Highway Traffic Safety Administration ("NHTSA"), the Small Business Administration, and the Internal Revenue Service ("IRS") have implemented remote identity proofing measures in an attempt to show that it is lawful. Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25,218. However, none of those regulations interpreted a Congressional statute that *requires* identification verification to *permit* videoconferencing. *Contrast* 49 CFR 580.3 (NHTSA regulation interpreting the Motor Vehicle Information and Cost Savings Act, 49 U.S.C. §§ 32701 *et seq.,* lacking statutory verification requirement); Small Business Administration, Lender and Development Company Loan Programs, SOP 50 10, at Appendix 10 (June 1, 2025), https://www.sba.gov/document/sop-50-10-lender-development-company-loan-programs (SBA guidance document interpreting 15 U.S.C. § 634, lacking statutory verification requirement); Internal Revenue Service, Publication 1075, Tax Information Security Guidelines, Section 3.3.8 Public-Facing Systems, at 86 (Nov. 2021), https://www.irs.gov/pub/irs-pdf/p1075.pdf (IRS guidance document interpreting 26 U.S.C. § 6103, lacking statutory verification requirement); *with* 18 U.S.C. § 922(t)(1)(D) (express statutory verification requirement). Aside from this significant legal distinction, the public safety risks from unauthorized persons gaining access to firearms is clearly much higher than gaining access to odometer disclosures, small business loan forms, and tax records.
[79] 18 U.S.C. § 922(t)(3).
[80] 139 CONG. REC. H9088-02, H9095 (statement of Rep. Hughes).

provisions as preventing the use of false identity documents during an in-person transaction.[81] Likewise, opponents criticized the provision for excessively burdening law-abiding in-person purchasers.[82] This evidence, from both supporters and detractors of the bill, further demonstrates that Congress conceived of § 922(t) as necessarily involving in-person verification—just as its high textual standard makes clear.

The Brady Act requires in-person verification of purchasers' identity. Because it would do away with that requirement well beyond Congress's narrow and explicit carve-outs, the Proposed Rule is contrary to law.

C. A Firearms Transaction that Fails to Meet the In-Person Verification Requirement is "Otherwise Prohibited" under the GCA.

Because § 922(t)(1)(D) requires an in-person verification and examination process, a transaction which fails to meet that requirement is unlawful. § 922(c) provides:

> *In any case not otherwise prohibited by this chapter*, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person *who does not appear in person* at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if [various statutory requirements are met]. (emphasis added).

If the transferor does not meet the identification verification and examination requirements, then "a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter."[83] Thus, transactions to private citizens which fail to meet the verification requirement of § 922(t)(1) are "prohibited" and the exception for selling a firearm to a person who does not appear in person under § 922(c) is not applicable.

There are only three narrow statutory exceptions to § 922(t)(1), which are delineated in § 922(t)(3), including if the transferee has a NICS-exempt state permit.[84] The current ATF regulation recognizes Congress's intent to treat these cases differently by reading "otherwise prohibited" to include NICS required transfers and to exclude NICS-exempt transfers:

> A licensed importer, licensed manufacturer, or licensed dealer may sell a firearm that is *not subject to the provisions of § 478.102(a)* [the NICS background check requirement] to a nonlicensee who does not appear in person at the licensee's business premises if the nonlicensee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee furnishes to the licensee the firearms transaction record, Form 4473, required by § 478.124.[85]

As described *supra* at II.A, Supreme Court precedent reinforces that this is the proper construction of the statute. ATF's Proposed Rule erroneously reads § 922(c)(3) to allow NOTC transactions to

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[81] 139 CONG. REC. H9088-03, H9115 (statement of Rep. Woolsey); *see also id.* at H9117–18 (statement of Rep. Hughes).
[82] *See, e.g.*, 139 CONG. REC. H9088-02, H9092 (statement of Rep. Volkmer); 139 CONG. REC. H9098-03, H9103 (statement of Rep. Hansen); *id.* at H9107 (statement of Rep. Bunning).
[83] 18 U.S.C. § 922(t)(1).
[84] *See supra* n. 56.
[85] 27 CFR 478.96(b) (emphasis added).

proceed without in-person verification, even though such transactions would be "otherwise prohibited" for the purposes of the statute.

The Proposed Rule violates Congress's carefully constructed statute by eliminating the distinction between NICS-required and NICS-exempt transfers. Rather than permitting NOTC sales in "limited circumstances"[86] for a "narrow class of prospective buyers"[87] such as those with a NICS-alternative permit, the Proposed Rule would expand NOTC sales to include sales to unlicensed persons subject to NICS background checks. As a result, the Proposed Rule would effectively make NOTC sales an option for all firearm sales, facilitating millions of remote firearm sales. This flips Congress's design on its head, by converting NOTC sales from a limited exception to a general rule. Such an interpretation is foreclosed by the in-person verification requirement imposed by § 922(t)(1)(D), the limited exceptions to this provision under § 922(t)(3), the "not otherwise prohibited" requirement of § 922(c), and the context and structure of our federal firearm laws. Thus, the Proposed Rule is contrary to law under the APA and ATF should withdraw it.

III. The Proposed Rule Is Arbitrary and Capricious.

The Proposed Rule is independently invalid because it is arbitrary and capricious. Under the APA, agencies must engage in "reasoned decisionmaking"[88] and consider "the advantages *and* the disadvantages of agency decisions" before acting.[89] When an agency changes course, ATF must display awareness that it is changing position and must give a reasoned explanation that takes account of the facts and circumstances underlying the prior policy.[90] And if the prior policy created significant reliance interests, ATF must assess and weigh those interests rather than ignore them.[91]

ATF failed to satisfy the arbitrary-and-capricious standard in multiple respects. ATF failed to properly consider important benefits of in-person identification verification: there are significant state law enforcement interests in in-person identification verification and examination, which play an important role in enabling licensed dealers to recognize red flags for straw purchasing, unlicensed dealing, and purchasers who present a threat to themselves or others. Relatedly, ATF failed to properly consider the States' reliance interests in the existing implementation of the GCA and the Proposed Rule's conflicts with state laws requiring in-person appearance to purchase firearms. Conversely, ATF also failed to consider the drawbacks of the Proposed Rule, let alone engage in reasoned analysis of them.[92] For example, ATF devoted no attention to the risks of remote identification verification, such as the increased difficulty of recognizing visual cues for straw purchasing, the risks of purchasers assuming false identities through technological deception (like AI), and other related issues. ATF failed to consider the issues associated with outsourcing identity verification to CSPs, which could hinder capability and dilute responsibility for preventing

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[86] *Abramski v. United States,* 573 U.S. 169, 175 (2014).
[87] *Id.* at 181.
[88] *Motor Vehicle Manufacturers Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983)
[89] *Michigan v. EPA*, 576 U.S. 743, 753 (2015) (emphasis in original).
[90] *See FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009).
[91] *See, e.g.*, *Dep't of Homeland Security v. Regents of the Univ. of Calif.*, 591 U.S. 1, 29 –30 (2020) (holding that agency's change in course from policy it deemed was illegal still required reasoned decision-making, including consideration of reliance interests).
[92] *See State Farm*, 463 U.S. at 43 (it is arbitrary and capricious to "entirely fail[] to consider an important aspect of the problem").

straw purchasing. The Proposed Rule also failed to consider obvious, less harmful alternatives. Finally, the Proposed Rule failed to consider its impact in the context of other related, proposed changes, such as the Administration's efforts to permit the mailing of firearms by the Postal Service, which could have the cumulative effect of dramatically increasing online gun sales and shipping across the country.

In-person identification verification is critical to enable FFLs to recognize red flags for straw purchasing and/or for unlicensed dealing, which FFLs are legally obligated to act on by refusing the sale.[93] Straw purchasing occurs when an individual buys a firearm for someone else, typically someone who is prohibited from purchasing a firearm. Unlicensed dealing is similar, but instead of buying the firearm for a specific person or group of people, the purchaser is buying firearms in bulk, without a particular recipient in mind, in order to illegally re-sell the firearms (without conducting the required background checks). Straw purchasing and unlicensed dealing lead to thousands of weapons being trafficked across the United States. For instance, between 2017 and 2021, straw purchasers trafficked nearly 38,000 firearms and unlicensed dealers trafficked more than 68,000 firearms.[94] And the consequences are deadly: nearly 24 percent of trafficked guns involving straw purchasing were eventually used in shootings, as were 16 percent of cases involving unlicensed dealers.[95] Indeed, ATF notes that "[f]irearms obtained through straw purchases are frequently linked to: [v]iolent crime, [d]omestic abuse, [d]rug trafficking, [and g]ang-related activity" and that "[p]reventing straw purchases helps reduce gun violence and protect communities nationwide and abroad."[96] Thus, gun trafficking poses a serious danger to the public and law enforcement.

ATF notes that FFL are "a critical line of defense against illegal gun transfers" and that "[r]etailers can help prevent straw purchases by [t]raining employees to recognize red flags."[97] ATF lists examples of "warning signs" that can indicate straw purchasing that FFL employees should respond to:

- "One person selects the firearm while another person pays
- A buyer who appears unfamiliar with the firearm
- A purchaser being directed or coached by someone else
- Reluctance to complete required background check paperwork"[98]

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[93] *See* 18 U.S.C. § 922(d).
[94] *See* ATF, *National Firearms Commerce and Trafficking Assessment (NFCTA), Volume III: Firearms Trafficking Investigations—Part V: Type and Volume of Firearms Trafficked*, (April 2024), 10, https://www.atf.gov/media/20771/download (Table TVF-09: Total Number of Cases and Volume of Trafficked Firearms by Trafficking Channel, 2017 – 2021).
[95] *See* ATF, *National Firearms Commerce and Trafficking Assessment (NFCTA), Volume III: Firearms Trafficking Investigations—Part IX: Investigation Outcomes*, (April 2024), 5, https://www.atf.gov/media/14521/download(Table IO-06: "Total Number of Cases by Trafficking Channel and Use in Shootings, 2017–2021.")
[96] ATF, *Don't Lie for the Other Guy*, https://www.atf.gov/firearms/tools-services-law-enforcement/atf-firearms-programs/dont-lie-other-guy (last updated Jul. 30, 2026) (citation modified).
[97] *Id.*
[98] *Id.* There are other, related visual cues that can indicate straw purchasing, including when a buyer:

- "Returns to the store after failing a background check with a friend to complete the sale."

Thus, ATF itself recognizes the importance of training and educating FFLs on recognizing signs of straw purchasing, and encourages them to post prominent signage in their store indicating straw purchasing's illegality and associated penalties.[99]

In-person verification and examination of identification is critical for identifying visual "red flags" for straw purchasing. For example, in-person inspection allows the FFL to have full field of vision of the purchaser, allowing them to monitor their conduct and body language during the transaction. The remote videoconferencing options envisioned by the Proposed Rule, on the other hand, pose numerous difficulties for doing so. For example, videoconferencing only provides a more limited field of vision of the purchaser based on the position of their computer or phone's camera, typically placing their hands and surroundings outside the camera's range.

There are clear consequences for not verifying and examining identification in-person. For instance, ATF notes that a key sign of straw purchasing is when a buyer is in communication with a third party during the purchase. For in-person transactions, such communication would be obvious: the FFL employee would physically see the buyer calling, texting, or physically interacting with a third party. But in remote transactions, the buyer could simply keep their hands outside of their camera's frame and message the third party through their computer or phone. They could also turn off their camera and/or mute their microphone, to participate in a separate phone call with a third party. And they could even have the third party physically with them, but just outside of their camera's field of vision. Firearms purchasers could also take advantage of artificial intelligence to falsify their appearance on a videoconference. Deepfakes are "[h]yper-realistic manipulations of audio-visual content,"[100] which can be utilized to fake a person's identity on a videoconference. Research already indicates that people "people cannot reliably detect deepfakes,"[101] and there are numerous examples of individuals using AI to forge "synthetic identities" and "mask their appearance in video calls."[102] So visual cues for straw purchasing that would be immediately obvious in-person could be concealed remotely.

In-person interaction can also be critical to FFLs' ability to detect if someone is experiencing a mental health crisis or showing signs of being a threat to themselves or others. Such in-person interaction is particularly important because firearms are responsible for about 50% of suicides and have the highest case fatality rate of any method.[103] Studies have shown that firearm

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- "Uses a shopping list to pick which firearm(s) to purchase and does not appear to understand much about the firearm(s) they have selected."
- "Communicates with other individuals who are directing or guiding the purchase."
- "Uses a credit card in someone else's name to pay for the firearm."
- "Pays for the firearm after another individual completed the required paperwork."

Nick Suplina et al, *The Supply Side of Violence: How Gun Dealers Fuel Firearm Trafficking*, Everytown Research & Policy (Dec. 2, 2025), https://everytownresearch.org/report/how-gun-dealers-fuel-firearm-trafficking/.

[99] *Id.*

[100] Nils Kobis et al, *Fooled Twice: People cannot detect deepfakes but think they can*, iScience (Oct. 29, 2021), https://pmc.ncbi.nlm.nih.gov/articles/PMC8602050/.

[101] *Id.*

[102] Amanda Gerut, *North Korean IT worker infiltrations exploded 220% over the past 12 months, with gen AI weaponized at every stage of the hiring process*, Forbes (Aug. 4, 2025), https://fortune.com/2025/08/04/north-korean-it-worker-infiltrations-exploded/.

[103] *See* Rachel Delafave, *An Empirical Assessment of Homicide and Suicide Outcomes with Red Flag Laws*, 52 Loyola University Chicago L.J. 867, 877-78 (2021), https://lawecommons.luc.edu/luclj/vol52/iss3/6. Tragically, 73

retailers are "ideally situated to aid[] in suicide prevention efforts" as they have "*face-to-face* contact with large numbers of community members as part of their usual routine."[104] FFLs also play an important role in refusing sales to those they suspect may pose a threat to others. For instance, there have been instances in which FFLs refused sales to individuals they suspected harbor violent intentions, helping foil possible mass shootings.[105] Removing any in-person interaction for firearm sales would limit FFLs' ability to observe and act on visual signs of mental health distress, contributing to a dangerous new status quo in which those intent on harming themselves or others can purchase and receive a firearm without ever interacting with a human being in-person. And observing signs of mental distress is also important for recognizing straw purchasing. For instance, ATF has previously noted that "[i]n some cases, individuals are coerced or manipulated into making a straw purchase. They might be threatened with harm or manipulated through emotional or psychological pressure by those who cannot legally purchase firearms themselves" and "people struggling with addiction or in desperate financial situations find the proposition of making easy money through straw purchases irresistible even if they understand the risks."[106]

Another related problem is that the Proposed Rule provides scant details about the CSPs it tasks with verifying a purchasers' identification documents. Although the Proposed Rule requires that the CSPs would need to conduct verification according to certain standards,[107] ATF apparently does not know if such CSPs actually exist. ATF could not list a single qualified CSP, noting that "[f]irms offering services that are compliant with the proposed rule do not seem to provide online pricing details."[108] And ATF acknowledges it "does not know how many CSPs would enter this market and their pricing, nor does it have an accurate model for market demand and anticipated adoption."[109] Thus, ATF proposes a new approach to permitting firearm sales online without any clear plan for who could actually carry it out.

Worse still, the Proposed Rule provides no details about whether the CSPs would receive any training or possess any responsibilities for preventing straw purchasing and ensuring compliance with gun safety laws. FFLs are responsible for ensuring compliance with the GCA, and can be subject to license revocation, civil and criminal penalties for violations.[110] But there is

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Americans die by firearms suicide every day. *Issues: Suicide*, Everytown, https://everytownresearch.org/issue/suicide/ (last visited Aug. 6, 2026).

[104] Thomas Walton & Jennifer Stuber, *Firearm Retailers and Suicide: Results from a Survey Assessing Willingness to Engage in Prevention Efforts*, 50 Suicide and Life-Threatening Behavior 83, 84 (2020), https://www.newswise.com/pdf_docs/156528446721836_Stuber%20Walton%20et%20al%20Firearms%20Retailers.pdf (emphasis added).

[105] See *Gun shop owner credited with foiling possible mass shooting*, CBS News (Mar. 29, 2016), https://www.cbsnews.com/news/ohio-gun-store-owner-john-downs-may-have-prevented-mass-shooting-by-refusing-sale/.

[106] ATF, *Don't Lie for the Other Guy*, (last updated Mar. 12, 2026), Internet Archive, https://web.archive.org/web/20260426200502/https://www.atf.gov/firearms/tools-services-law-enforcement/atf-firearms-programs/dont-lie-other-guy. ATF apparently removed this content when it recently updated this website on July 30, 2026. *Compare* with *supra* n. 96.

[107] Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25218-25220.

[108] *Id.* at 25224

[109] *Id.*

[110] *See* 18 U.S.C. § 923(e); 27 CFR 478.73(a); 18 U.S.C. § 924; *see also The Supply Side of Violence, supra* note 98 ("[G]un dealers could immediately interrupt the most common forms of gun trafficking simply by paying attention to their customers, being vigilant about obviously suspicious sales, and refusing to sell guns to traffickers. Their

no indication these responsibilities extend to the third party CSPs described in the Proposed Rule.[111] For example, even if a purchaser presented obvious red flags for straw purchasing during a videoconference with a CSP, such as stating that he intends to make the purchase for another person, the Proposed Rule does not make clear if the CSP would have (1) any training to recognize this as a sign of straw purchasing, (2) any affirmative obligations to report this behavior to the FFL to prevent the firearms transaction, or what recourse is available if the CSP fails to do so. Despite the Proposed Rule's vague assurances that FFL's themselves could still be somewhat involved in the NOTC identification verification process,[112] there are troubling, unanswered questions regarding the CSP's role.

ATF estimates the Proposed Rule would lead to 3.28 million more remote firearm purchasers per year.[113] Some portion of these remote sales will inevitably be straw purchases and unlicensed dealing, resulting in potentially thousands more trafficked firearms. And even if state gun safety laws are able mitigate some of the impact of this Proposed Rule,[114] the risks for the States would still be heightened given the "predictable pattern" for gun trafficking, in which "[f]irearms are sourced in states with lax gun laws and funneled into target states with tighter restrictions."[115] For example, between 2016 and 2020, 27% of traced guns, or 390,154 guns, were recovered in a different state than where they were originally sold, and 74% of those guns were originally purchased in states without background check laws.[116]

Relatedly, ATF entirely failed to assess the States' reliance interests in the existing in-person framework.[117] States have built their own firearms licensing, sale, and recordkeeping systems on the federal baseline of in-person dealer transactions. Massachusetts, for example, prohibits a dealer from filling any order for a firearm received by mail, telephone, or internet unless the transaction includes in-person presentation of the purchaser's required Massachusetts license

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failure to do so is not just a moral disappointment—it is a violation of their obligations as federally licensed gun dealers and, in some cases, potentially criminal.").

111 The closest the proposed rule comes to this point is stating "FFLs […] would be responsible for ensuring that any CSP they engage to supply remote identity proofing and authentication meets the proposed NIST standards and processes described in this rule." Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25220. But this only speaks to the process and guidelines for identity proofing, not the important additional obligations described that have been traditionally performed by FFLs in the past.

112 *See* Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25219-25220 ("After the CSP verifies the transferee's identity, FFLs use the information they collected by examining and comparing the identification document during the videoconferencing session to initiate a NICS background check, as they currently do").

113 *Id.* at 25216.

114 *See* N.J. Admin. Code §§ 13:54-3.12, 13:54-3.13(a)(6); N.J. S.A. § 2C:58-3(a), 3(b), 3(f), 3(i)); NJ Rev Stat §§ 2C:58-2(a)(7), 2C:58-3(i); N.J. Admin. Code § 13:54-1.9(a)); N.J. S.A. § 2C:39-6(g); FIREARMS FAQ's – New Jersey State Police, https://njsp.njoag.gov/firearms-faqs/ ("You may only ship a firearm to a Federally Licensed Firearms dealer (FFL) for sale or repair"). Mass. Gen. Laws ch. 140, § 123(b), (k) (Massachusetts law independently requires all dealer transactions to occur at the dealer's licensed premises and bars dealers from filling remote orders unless the purchaser presents the required license, card, permit, or documentation in person before the firearm is sold, delivered, or otherwise transferred). Cal. Penal Code 28180 (FFLs required to obtain purchaser information from the magnetic strip on the purchaser's driver's license); Cal. Penal Code 28160(a)(33) (salesperson required to witness purchaser's signature); Cal. Penal Code 28160(b) (requires purchaser's right thumbprint).

115 *The Supply Side of Violence*, *supra* note 98.

116 Everytown Research and Policy, *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/.

117 *See Regents of the Univ. of Calif.*, 591 U.S. at 29–30; *Fox Television Stations*, 556 U.S. at 515.

before any sale, delivery, or transfer; requires that all dealer transactions be conducted at the dealer's licensed business premises; requires the dealer, before any transfer, to verify that the person presenting a license or card is its lawful holder; and requires dealers to record every firearm transaction, subject to police inspection.[118] In-person examination at the point of sale is also what enables dealers to comply with the GCA's residence-based restrictions, which turn on reliably knowing who—and where—the purchaser is.[119] The Proposed Rule nowhere acknowledges—much less assesses and weighs—these State systems, or the added investigative and enforcement burdens the States will bear when remote sales completed under the laxer laws of other states are trafficked into States like New Jersey, California, and Massachusetts.

ATF also failed to consider obvious, less-harmful alternatives—an independent hallmark of arbitrary agency action.[120] The Proposed Rule's alternatives analysis considered only a no-action baseline, an expansion of the pool of verification vendors, and the rule as proposed.[121] ATF never considered, among other options: (1) retaining the longstanding NICS-exempt limitation on NOTC transfers while reducing burdens through the statute's recently enacted electronic CLEO-notification procedures;[122] (2) relying on the existing, lawful practice by which a purchaser buys a firearm remotely and completes the transfer—including in-person identification verification and the NICS check—at a conveniently located FFL near the purchaser's residence, an option that already provides the convenience ATF invokes while preserving every in-person safeguard; (3) piloting any remote-verification process on a limited basis, with mandatory audits, retention of recorded verification sessions, and public reporting, before nationwide implementation; and (4) at a minimum, requiring biometric-pathway verification, ATF registration and oversight of CSPs, and mandatory training and reporting obligations for CSPs concerning indicators of straw purchasing. The States do not offer these alternatives as substitutes for withdrawal; they identify them because the APA required ATF to consider them. Its failure to do so is an independent reason the Proposed Rule is arbitrary and capricious.

The risks from this Proposed Rule are even more serious when considering its interaction with others proposed by the Administration, including in ATF's "New Era of Reform" package.[123] For instance, the Postal Service has issued a Proposed Rule that purports to partially repeal 18 U.S.C. § 1715 to allow individuals to receive pistols, revolvers, shotguns and rifles via the U.S. Mail without using a licensed retailer as an intermediary[124]—even when such shipments violate state laws restricting the possession and transfer of firearms.[125] Paired with this Proposed Rule, the result will be millions of online firearm purchases received by mail, circumventing *any* in-person identification verification by an FFL and state gun safety laws. Consequently, these Proposed

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[118] Mass. Gen. Laws ch. 140, § 123(b), (f), (h), (k), as amended by St. 2024, c. 135, § 37; *see also* 803 CMR 10.00 (electronic recording of gun transactions).
[119] *See* 18 U.S.C. § 922(b)(2)–(3).
[120] *State Farm*, 463 U.S. at 46–51; *see also Regents of the Univ. of Calif.*, 591 U.S. at 30 (agency must consider obvious alternatives short of full rescission).
[121] Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25225.
[122] 18 U.S.C. § 922(c)(2)(A)(ii) (permitting notice to the chief law enforcement officer by "verified electronic notification").
[123] *ATF's New Era of Reform*, *supra* note 8.
[124] Revising Mailing Standards for Firearms, 91 Fed. Reg. 16601 (Apr. 2, 2026).
[125] *AG Davenport, States Oppose U.S. Postal Service Rule Flouting Federal Gun Law*, New Jersey Attorney General's Office (May 4, 2026), https://www.njoag.gov/wp-content/uploads/2026/05/2026-0504_Multistate-Comment-on-Proposed-Amendments-to-Pub-52.pdf.

Rules could supercharge the online gun industry and lead to huge increases in the number of mailed firearms, with enormous implications for public safety.[126] These risks will not only impose significant costs and burdens on state and local law enforcement, but also threaten States' sovereign and fundamental interests in the integrity and enforcement of their laws.

ATF has also issued other rule proposals that could amplify the dangerous effects of this one. For instance, ATF has proposed other rules that would narrow federal criminal straw purchasing statutes[127] and heighten the standard for proving culpability for violations of the GCA by FFLs.[128] As a result, the risks created by this Proposed Rule would be compounded by the new difficulty for proving straw purchasing or willful facilitation of straw purchasing by FFLs. And ATF is also proposing eliminating physical address requirements for identification documents for firearms purchases,[129] so the identity verification occurring under this Proposed Rule could end up omitting important information. This Proposed Rule's consequences for firearm trafficking alone are concerning, but the picture is even more dire when paired with ATF's deregulatory package as a whole—which is a wholesale administrative revision of federal laws that have helped protect the public for decades.

ATF failed to consider *any* of the public safety costs associated with this Proposed Rule, nor did it consider the important reliance interests in the agency's prior interpretation of the GCA. And ATF divided the administrative record in a way that makes the whole package harder to see, obfuscating an evaluation of the collective impact of its proposed changes. The APA does not permit this kind of compartmentalized decision-making. An agency must "examine the relevant data" and provide a reasoned explanation that shows a "rational connection between the facts found and the choice made."[130] Here, the actual consequence of this Proposed Rule and others is a coordinated weakening of federal firearm laws that will facilitate the growth of an online firearm shipping industry and increase firearm trafficking. As a result, ATF's actions threaten public safety and the States' ability to protect their citizens and enforce their laws. For these reasons, the Proposed Rule is arbitrary and capricious.

IV. Procedural Defects Compound these Substantive Failures.

The Proposed Rule suffers from several procedural defects that are independent of, and compound, their substantive shortcomings. The APA requires a transparent process that permits meaningful public participation, discloses the actual basis for agency action, and allows affected sovereigns and stakeholders to respond to the materials and assumptions that shaped the proposal. Here, the available record raises serious concerns that ATF failed to consult with the States, despite obvious federalism implications, and relied on undisclosed industry input. These are not technical defects. They go to the integrity of the rulemaking process and cannot be cured through post hoc explanations in a final rule.

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[126] For more detailed discussion of the risks with the Postal Service mailing firearms, *see AG Davenport, States Oppose U.S. Postal Service Rule Flouting Federal Gun Law, supra* note 125. This Proposed Rule would accentuate those risks, by further facilitating online gun sales and remote shipping options, along with the other risks described in this comment letter.
[127] Firearms Transactions and Straw Purchases, 91 Fed. Reg. 24,448.
[128] Defining "Willfully" for Firearms Violations, 91 Fed. Reg. 25,201.
[129] Revising Firearms Transaction Record, "Form 4473," 91 Fed. Reg. 25,432.
[130] *State Farm*, 463 U.S. at 43 (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

A. ATF Failed to Conduct Required State Consultation Under Executive Order 13132.

Executive Order 13132 defines "policies that have federalism implications" to include regulations and policy actions that have "direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."[131] And §6(a) of that order requires every agency to maintain an accountable process to ensure "meaningful and timely input by State and local officials" in developing regulatory policies with federalism implications.[132] The Proposed Rule and others related to it could directly affect state law enforcement and public-safety systems.

ATF's determination that the Proposed Rule does not warrant a federalism summary impact statement is inadequate and erroneous. The question is not whether the Proposed Rule explicitly commands States to spend money or preempts their state laws. Executive Order 13132's inquiry is broader: whether the proposal has substantial direct effects on the States or on the federal-state allocation of public safety responsibility. Executive Order 13132 and the OMB implementing guidance require more than a conclusory certification. In fact, the OMB guidance explains that agencies must have an accountable process for "meaningful and timely input" by state and local officials, that the process must involve state and local officials or their representative national organizations, and that consultation should occur "early in the process of developing the proposed regulation."[133] For rules that trigger the specific Section 6(b) or Section 6(c) procedures, the agency must also provide a federalism summary impact statement describing prior consultation, state and local concerns, and the extent to which those concerns were met.[134]

ATF ignored that process. The Proposed Rule does not identify any meaningful or timely consultation with the States, describe which state or local officials were consulted, summarize any concerns raised by those officials, or explain how ATF considered those concerns before making this Proposed Rule Instead, the Proposed Rule presumes that no consultation was required. That conclusion required a reasoned explanation, particularly given the proposal's effects on States' law enforcement and public-safety responsibilities. If ATF engaged in some informal or limited communications with state or local officials, the Proposed Rules still failed to disclose the nature of those communications in a way that would allow states and the public to evaluate whether ATF obtained the "meaningful and timely input" required by Executive Order 13132.[135] The Proposed Rule therefore deprived States of both the consultation process to which they were entitled and the notice necessary to respond.

The omission is especially serious because the public record suggests that DOJ and ATF consulted closely with regulated industry stakeholders while excluding state and local law

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[131] Exec. Order No. 13,132, § 1(a), 64 Fed. Reg. 43,255, 43,255 (Aug. 10, 1999).
[132] *Id*. § 6(a), 64 Fed. Reg. at 43,257.
[133] Off. of Mgmt. & Budget, Exec. Off. of the President, M-00-02, Guidance for Implementing E.O. 13132, "Federalism", 4–6 (1999).
[134] Exec. Order No. 13,132, § 6(b)–(c).
[135] *Id.* at § 6(a).

enforcement partners who bear the public safety consequences of firearm trafficking.[136] Executive Order 13132 does not permit ATF to consider industry burden while ignoring state public-safety reliance.

On this record, ATF's Executive Order 13132 determination is not supportable. ATF should withdraw the Proposed Rules and, at minimum, consult with affected state and local officials, including the undersigned, before re-proposing the Proposed Rule.

B. ATF Has Not Disclosed the Substance of Outside Influence That Appears to Have Shaped the Proposed Rule.

ATF's administrative record contains a direct and material tension concerning the development of this proposal. In materials accompanying the rulemaking package, ATF states that "[n]one of these rules were drafted directly or indirectly by any member of the gun industry."[137] Yet DOJ and ATF's own public communications, and the contemporaneous statements of industry organizations, describe a materially different process.

At the public announcement of the rulemaking package, DOJ and ATF said the review leading to these Proposed Rules "included consideration of industry and expert feedback and concerns,"[138] and ATF's "New Era of Reform" materials characterize the Proposed Rules as part of "a landmark package of proposed and final rules" built on "partnership with the firearms industry," "trust and collaboration," and "working with federal firearms and explosives licensees as partners."[139] That message was reinforced at the announcement itself: standing before representatives of the National Shooting Sports Foundation, the National Rifle Association, the American Suppressor Association, and the Gun Owners of America, ATF Director Cekada explained that the Bureau's year-long review considered "licensee feedback," involved conversations with "stakeholders," and produced a package grounded in "transparency, accountability, and partnership."[140] Acting Attorney General Blanche admitted that the Federal Government's firearms policy would benefit the "gun industry" by moving it "forward a mile": "Going back to the Reagan administration, the gun industry takes two steps forward. And then a Democrat comes in and takes us eight steps back … We're not going to take two steps forward. *We're going to go forward a mile*."[141] These statements are not consistent with an administrative record that denies that industry directly or indirectly shaped the rules. By his own statement, Acting Attorney General Blanche considers "we" to include "the gun industry" as opposed to the federal government or the people it serves.

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[136] *See infra* at 21-24.
[137] ATF, *ATF Launches New Era of Reform: Questions and Answers* (2026), www.atf.gov/rules-and-regulations/atf-launches-new-era-reform/questions-and-answers (last visited Aug. 3, 2026).
[138] *DOJ and ATF Announce Regulatory Reforms*, *supra* note 3.
[139] *ATF's New Era of Reform*, *supra* note 8.
[140] *Acting AG Blanche and Acting ATF Director Cekada Announce Changes to ATF Regulations*, U.S. Dept. of Justice – Office of Public Affairs, at 11:23:48 (DOJ Live, streamed Apr. 29, 2026), https://www.justice.gov/opa/video/acting-ag-blanche-and-acting-atf-director-cekada-announce-changes-atf-regulations.
[141] *Acting U.S. Attorney General Todd Blanche Outlines Sweeping Second Amendment Overhaul at Trump DOJ*, *supra* note 9 (emphasis added).

Industry representatives have likewise confirmed their substantive involvement in this rulemaking process. The National Shooting Sports Foundation, the firearms industry's trade association, claimed that the package was "the result of months of NSSF working closely with the ATF and DOJ" to identify and revise regulations, and that package included priorities "NSSF has long championed."[142] The American Suppressor Association stated that it had "worked closely with Robert Cekada" to ensure gun owners had "a seat at the table in shaping policy."[143] The National Rifle Association described the package as reflecting its own recommendations, stating that it had submitted a memorandum to DOJ with "some 50 actions" the Executive Branch could take, that the administration had already acted consistently with "at least half" of those suggestions, and that DOJ and ATF's Proposed Rules "continued this momentum" by addressing matters requiring formal rulemaking.[144] Gun Owners of America also claimed credit for the package, stating that it had "fought the Department of Justice for rule changes by ATF," that it "appeared at the Department of Justice for the signing of 34 new ATF Rules," and that it had been "lobbying the Justice Department for months . . . hoping to change ATF policy."[145]

That presents a significant legal problem. While informal rulemaking does not prohibit *ex parte* contacts, significant communications presenting new data or substantial argument must be reflected in the public record so that affected parties may respond and reviewing courts may assess the basis for the agency's decision—not to forbid such discussions, but to make sure the record can tell the whole story.[146] In other words, consistent with the role of reasoned decision-making and judicial review, an agency may not rely on material unavailable to commenters while denying them an opportunity to test, examine, and criticize the basis for agency action.[147] So if DOJ and ATF relied on industry-supplied information—including, but not limited to, burden estimates, factual assertions, legal memoranda, enforcement anecdotes, draft language, or policy recommendations—those materials necessarily formed part of the practical basis for the proposal and should have been placed in the record for the public to be able to meaningfully respond.

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[142] *NSSF Welcomes ATF Landmark Rulemaking Package*, Nat'l Shooting Sports Found. (Apr. 29, 2026), https://www.nssf.org/articles/nssf-welcomes-atf-landmark-rulemaking-package/; *see also* Stephen Gutowski, *How ATF's New Regulations Change the Gun Industry (Ft. NSSF's Larry Keane)*, The Reload, at 04:42 (May 10, 2026), https://thereload.com/podcast-how-atfs-new-regulations-change-the-gun-industry-ft-nssfs-larry-keane/ (Larry Keane, NSSF's Senior Vice President and General Counsel, claimed that ATF reached out to NSSF "as they were working on the drafts to get perspective from the industry.").
[143] *ASA Statement on Nomination of Robert Cekada for ATF Director*, Am. Suppressor Ass'n, (Nov. 18, 2025), https://americansuppressorassociation.com/news/asa-statement-on-nomination-of-robert-cekada-for-atf-director.
[144] *ATF Announces New Director, Historic Regulatory Overhaul*, Nat'l Rifle Ass'n, (Apr. 30, 2026), https://www.nraila.org/articles/20260430/atf-announces-new-director-historic-regulatory-overhaul.
[145] Erich Pratt, *Here's What GOA Did for Your Gun Rights This Week*, Gun Owners of Am. (May 2, 2026), https://www.gunowners.org/na040226/.
[146] *See Sierra Club v. Costle*, 657 F.2d 298, 401–04 (D.C. Cir. 1981) (holding that agency decision-making ultimately must rest on "evidence in the record" and cannot depend on undisclosed communications that evade meaningful scrutiny).
[147] *See, e.g., Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 393–94 (D.C. Cir. 1973) (holding "it is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, [in] critical degree, is known only to the agency."); *United States v. Nova Scotia Food Prods. Corp.*, 568 F.2d 240, 251–52 (2d Cir. 1977) (holding that the agency must disclose "pertinent research material" relied upon "so as to elicit comments that probe the fundamentals."); *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236–40 (D.C. Cir. 2008) (vacating a rule where the agency "fail[ed] to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.").

The concern is heightened because the constituency apparently involved here is not a neutral technical advisor but the same regulated industry that stands to benefit directly from the proposed changes. The DOJ and ATF announcement describes the package as "regulatory reforms to reduce burdens on law-abiding gun owners and businesses,"[148] and the National Shooting Sports Foundation described the package as addressing regulations that had "increased compliance costs for the industry."[149] Notably, members of President Trump's family could stand to benefit financially from the Proposed Rule based on their business interests in the firearms industry. The President's son, Donald Trump Jr., is on the board of directors of GrabAGun,[150] an online gun company described as the "Amazon of guns," which has stated it is "uniquely positioned to capitalize" on this Proposed Rule.[151] Where an agency develops deregulatory proposals with substantial assistance from regulated parties while shielding the substance of that assistance from public scrutiny, the resulting asymmetry undermines the fairness and legitimacy of the rulemaking process.

Nor can DOJ and ATF cure the defect by making disclosures in the final rule. Commenters cannot meaningfully respond to arguments, assumptions, data, or proposed language that were never disclosed during the comment period. Once the comment period closes, the opportunity to test those materials has already been lost.[152] DOJ and ATF should therefore place into the record all materials—from both before and after release of the Proposed Rule—concerning communications with industry representatives, trade associations, advocacy organizations, Members of Congress or their staff, and other stakeholders, including the President's son, concerning the Proposed Rule. That disclosure should include meeting dates, attendees, summaries, draft text, burden estimates, factual assertions, communications, and legal memoranda.

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[148] *DOJ and ATF Announce Regulatory Reforms*, *supra* note 3.
[149] *NSSF Welcomes ATF Landmark Rulemaking Package*, *supra* note 142.
[150] GrabAGun, *Board of Directors,* https://investors.grabagun.com/governance/board-of-directors/default.aspx.
[151] GrabAGun, *GrabAGun Digital Holdings Reports First Quarter 2026 Results* (May 13, 2026), https://investors.grabagun.com/news/news-details/2026/GrabAGun-Digital-Holdings-Reports-First-Quarter-2026-Results/default.aspx ("The ATF has proposed amendments that could allow remote firearm transfers with secure identity verification and direct-to-home delivery under an approved framework, and we believe GrabAGun is uniquely positioned to capitalize on this potential opportunity. For over 15 years, we have invested in building the digital infrastructure, compliance systems and regulatory expertise required to operate in this complex regulatory environment at scale. Few companies have spent that long building the operational foundation that this kind of regulatory evolution would demand."); *See also* Chip Brownlee, *Todd Blanche, Donald Trump Jr. Face Questions Over Direct-to-Door Gun Rule*, The Trace (Jul. 15, 2026), https://www.thetrace.org/newsletter/todd-blanche-donald-trump-jr-grabagun-atf-direct-to-door-gun-rule/ (citing a July 14 letter from Senators Blumenthal and Murphy, available at https://www.documentcloud.org/documents/28476288-muprhy-blumenthal-blanche-letter/, raising concerns about GrabAGun's potential use of inside information, given that "[i]t appears that GrabAGun had information about the potential change in the regulatory landscape and made a series of business decisions to capitalize on the moment."); Brian O'Connell, *Trump Jr.'s New Venture Aims to Sell Firearms Via the mail — And a Proposed Federal Rule Change Could Make That Happen*, Yahoo!Finance (Jul. 9, 2026), https://finance.yahoo.com/economy/policy/articles/trump-jr-venture-aims-sell-174500165.html; Eric Cortellessa, *Bringing a Gun Company Public, Donald Trump Jr. Seeks to Grow the MAGA Economy*, Time (Jul. 17, 2025), https://time.com/7303326/grabagun-stock-donald-trump-jr/.; *GrabAGun, a Mobile-Focused Online Firearms Retailer Defending the Second Amendment, to Become a Public Company through a Business Combination with Colombier Acquisition Corp. II,* Businesswire (Jan. 6, 2026), https://www.businesswire.com/news/home/20250106730864/en/GrabAGun-a-Mobile-Focused-Online-Firearms-Retailer-Defending-the-Second-Amendment-to-Become-a-Public-Company-through-a-Business-Combination-with-Colombier-Acquisition-Corp.-II.
[152] *See* 5 U.S.C. § 553(c).

DOJ and ATF should then reopen the comment period for at least 90 days. Otherwise, any final rule will rest on a procedurally defective record.

C. ATF Has Not Complied with Executive Order 12866.

Executive Order 12866 requires an agency to assess the costs and the benefits of a regulatory action and to proceed only based on a reasoned determination that the benefits justify the costs. But here, ATF's analysis is one-sided. ATF quantifies the travel-time savings it projects for remote purchasers while treating the public-safety, investigative, and enforcement costs as though they are zero. The Regulatory Impact Analysis monetizes $103.7 million in projected annual benefits—almost entirely the value of purchasers' avoided travel time. At the same time, ATF conceded that it "does not know how many CSPs would enter this market and their pricing, nor does it have an accurate model for market demand and anticipated adoption."[153] And ATF assigned no value to any public-safety, investigative, or enforcement cost. An agency acts arbitrarily when it credits speculative or comparatively modest private savings while declining even to estimate the harms for public safety. That defect is not confined to one rule; it runs through the "New Era of Reform" package,[154] and is compounded by ATF's refusal to analyze the rules' cumulative effects.

* * *

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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[153] Revising Non-Over-the-Counter Firearms Transaction Requirements, 91 Fed. Reg. at 25221–24.
[154] *See ATF's New Era of Reform, supra* note 8.

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