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July 6, 2026

Via Federal eRulemaking Portal and U.S. Mail

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-AA89, RIN-1140-AA70, RIN 1140-AA65, RIN 1140-AA75, RIN 1140-AA76

RE: Multistate Comment Letter on Recently Proposed Changes to Regulations Related to the National Firearms Act of 1934

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

The undersigned Attorneys General of the States of California, New York, Arizona, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia submit this comment letter in response to the Notices of Proposed Rulemaking by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (ATF) in the May 6 and 8, 2026 editions of the Federal Register.

This letter addresses proposed rules related to the National Firearms Act of 1934 (NFA), entitled:

- Interstate Transport and Temporary Export of NFA Firearms (RIN 1140-AA89), 91 Fed. Reg. 25229 (May 8, 2026);
- Removing CLEO Notification Under the NFA (RIN 1140-AA65), 91 Fed. Regs. 24471 (May 6, 2026);

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- Allowing Makers to Adopt Certain Markings for NFA Firearms (RIN 1140-AA70), 91 Fed. Reg. 24466 (May 6, 2026);
- Transferring Machine Guns Between Qualified Licensees (RIN 1140-AA75), 91 Fed. Reg. 24485 (May 6, 2026); and
- Clarifying Special (Occupational) Tax Payments Per Business Activity (RIN 1140-AA76), 91 Fed. Reg. 24478 (May 6, 2026).

The undersigned States object to these proposed rules for the reasons discussed below.

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INTRODUCTION

The undersigned States object to the above-listed proposed rules because, if adopted, they would eliminate important tools available to state and local law enforcement agencies for identifying and tracking NFA-regulated weapons and devices that come into their jurisdictions. This would, at a minimum, impair the ability of law enforcement to investigate violent crimes, create significant risks for law enforcement and public safety, and impact state sovereignty.

The NFA regulates the manufacture, sale, and transfer of certain firearms (e.g., fully-automatic machineguns, short-barreled rifles, and short-barreled shotguns) and devices (e.g., silencers, explosives, and rockets), which are generally referred to as “NFA firearms.”¹ As ATF itself explains, one of the NFA’s “underlying purpose[s] was to curtail, if not prohibit, transactions in NFA firearms.”² The particular weapons regulated by the NFA are “highly dangerous offensive weapons.”³ That is because these weapons “can empower a single individual to take many lives in a single incident.”⁴

I. RECENT INCREASES IN NFA MANUFACTURING AND TRANSFERS, AND RELATED CONSEQUENCES

Nevertheless, as ATF has recently recognized, the manufacturing of NFA weapons and the applications to make or transfer the same have skyrocketed over the past two decades. As to manufacturing, licensed “domestic NFA weapon manufacturing increased by 601% between 2000 (79,862) and the peak year of 2022 (560,170).”⁵ For short-barreled rifles in particular, the annual manufacturing “increased by more than 24,000% between 2000 and 2020.”⁶ In 2024, ATF noted “shifts in the dominance of types of NFA weapons manufactured,” explaining that while there was a 333% increase in annual machinegun manufacturing volume between 2000 and 2008, the subsequent decrease also saw an increase of 9,504% in annual *silencer* manufacturing volume between 2000 and 2021 and an increase of 78,027% in annual *short-barreled rifle* manufacturing volume between 2000 and 2022.⁷ In other words, while machinegun

¹ See 26 U.S.C. § 5845(a). While silencers are not considered an “arm,” see *United States v. DeBorba*, No. 24-3304, ___ F.4th ___, 2026 WL 1587553, at *4 (9th Cir. June 3, 2026), the NFA groups them into the term “firearm,” and this letter will accordingly do the same when referring to “NFA firearms” or “NFA weapons.”

² ATF, National Firearms Act Handbook, Ch. 1 at p. 1 (July 9, 2019), <https://www.atf.gov/media/25141/download> [<https://perma.cc/939Q-QUXH?type=standard>].

³ *United States v. Freed*, 401 U.S. 601, 609 (1971).

⁴ 81 Fed. Reg. 2669.

⁵ ATF, National Firearms Commerce and Trafficking Assessment: NFCTA Updates, New Analysis, and Policy Recommendations, Vol. IV, Part I: Firearm Commerce Updates and New Analysis at 1, <https://www.atf.gov/firearms/docs/report/nfcta-volume-iv-part-i-firearm-commerce-updates-and-new-analysis/download> [<https://perma.cc/6U3N-DUHR>] (last visited July, 6 2026).

⁶ ATF, National Firearms Commerce and Trafficking Assessment: NFCTA Updates, New Analysis, and Policy Recommendations, Vol. IV, Introduction at 1, <https://www.atf.gov/firearms/docs/report/nfcta-volume-iv-introduction/download> [<https://perma.cc/2YLC-FEQU>] (last visited June 17, 2026).

⁷ ATF, National Firearms Commerce and Trafficking Assessment: NFCTA Updates, New Analysis, and Policy Recommendations, Vol. IV, Part I: Firearm Commerce Updates and New Analysis at 6-7, 26, <https://www.atf.gov/firearms/docs/report/nfcta-volume-iv-part-i-firearm-commerce-updates-and-new-analysis/download>.

manufacturing has become a smaller proportion of the NFA weapons manufactured each year since 2008, silencer and short-barreled rifle manufacturing has skyrocketed during the same timeframe. In 2024, ATF noted that “[s]ilencers have become the dominant NFA weapons manufactured for domestic distribution. In 2023, silencers accounted for 83% of the total NFA weapons manufactured and distributed into domestic commerce that year.”⁸

The number of applications to make or transfer NFA firearms has similarly increased over the past decade and is projected to increase substantially over the next several years, likely in part because the tax to transfer or make an NFA weapon has been reduced from \$200 to \$0 for all NFA weapons except machineguns and destructive devices.⁹ Specifically, ATF noted that the “annual number of NFA applications received by ATF increased nearly 107% between 2016 (525,582) and 2023 (1,086,302).”¹⁰ During that same time period, there were increases across “nearly all types of NFA” applications, but the two largest were the 355% increase in Form 1 submissions (to make an NFA weapon) and the 78% increase in Form 4 submissions (to transfer an NFA weapon).¹¹ When the tax for NFA weapon applications was zeroed out effective January 1, 2026, there was a 5,900% increase in the number of NFA applications submitted that day, compared to the average daily rate of NFA application submissions.¹²

These exponential increases in the manufacturing and transferring of NFA weapons have not been without consequence, as noted by ATF. From 2017 to 2021, unlawful possession of a machinegun and receiving or possessing an unregistered NFA weapon were in the top three categories of criminal charges associated with subjects referred for prosecution in national illegal firearm recovery cases. Those cases “involve the coordination of enforcement actions across field divisions and result in the recovery of significant numbers of illegally manufactured or illegally imported firearms and firearm parts that have been unlawfully transferred across the U.S.”¹³ As recently as 2024, ATF noted in its own report that its firearms trafficking investigations revealed that “all types of NFA weapons including machineguns, machinegun parts, machinegun conversion devices, silencers, silencer parts, and short-barreled rifles were trafficked.”¹⁴

[analysis/download](https://www.atf.gov/firearms/docs/report/nfcta-volume-iv-part-i-firearm-commerce-updates-and-new-analysis/download) [<https://perma.cc/6U3N-DUHR>] (last visited July 6, 2026).

⁸ *Id.*

⁹ Changes to National Firearms Act Tax Remittance Provisions (RIN 1140-AA83), 91 Fed. Reg. 25112, 25115 (May 8, 2026); *see also* 26 U.S.C. §§ 5811, 5821.

¹⁰ ATF, National Firearms Commerce and Trafficking Assessment: NFCTA Updates, New Analysis, and Policy Recommendations, Vol. IV, Part I: Firearm Commerce Updates and New Analysis at 19, <https://www.atf.gov/firearms/docs/report/nfcta-volume-iv-part-i-firearm-commerce-updates-and-new-analysis/download> [<https://perma.cc/6U3N-DUHR>] (last visited July 6, 2026).

¹¹ *Id.* at 20.

¹² Greg Lickenbrock, *Silencer Applications Surge After Trump’s NFA Tax Cuts*, *The Smoking Gun* (Jan. 6, 2026), available at <https://smokinggun.org/silencer-applications-surge-after-trumps-nfa-tax-cuts/>.

¹³ ATF, National Firearms Commerce and Trafficking Assessment: Firearm Trafficking Investigations, Vol. III, Part X: National Illegal Firearm Recoveries at 1, 5, <https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-x/download> [<https://perma.cc/QNL5-XGXM>] (last visited June 17, 2026).

¹⁴ ATF, National Firearms Commerce and Trafficking Assessment: NFCTA Updates, New Analysis, and

II. THE HARMS OF PRESENTING THE PROPOSED RULES AS DISCRETE PROPOSALS INSTEAD OF PARTS OF A WHOLE

The proposed rules, both individually and collectively, would effectively dismantle the current regulatory framework for NFA weapons and make it easier to manufacture, sell, and transport NFA firearms without the knowledge of state and local law enforcement agencies. States bear primary responsibility for protecting the public and have a substantial interest in preventing the trafficking of illegal weapons and devices across their borders that then lead to increased gun violence. States have also spent considerable effort developing systems to track firearm sales and ownership. This information is critical in protecting law enforcement and providing them with the most recent data when responding to and trying to prevent criminal activity. This is just a sampling of reasons why the proposed rules related to the making, selling, and transporting of NFA firearms must, at a minimum, consider the ability of State and local law enforcement to identify and track those firearms in their jurisdictions, particularly when possession of certain NFA weapons are prohibited in their jurisdictions.¹⁵

ATF presents its NFA-related deregulatory package as a set of discrete, technical changes. That presentation is misleading because the proposed rules do not operate in isolation. And here, the NFA regulations work together to weaken the legal framework that has been operating for nearly a century to, in ATF's words, "curtail" transactions in NFA weapons.¹⁶ By separating these interlocking changes into different dockets, ATF can characterize the change in any individual proposed rule as narrow, incremental, or administratively modest. But the public safety impact does not come from any one link viewed alone. It comes from the combined effect of weakening multiple links in the same chain at the same time. This segmentation obscures the real regulatory choice before ATF, the public, the States, and any reviewing court. The question is not whether each individual proposed rule can be described as modest when viewed in isolation. The question is what happens to NFA weapon trafficking detection, state enforcement of laws that prohibit NFA weapons, and state and local investigations, when all of these changes take effect together. ATF has not answered that question. Instead, it has divided the administrative record in a way that makes the whole package harder to see and harder to evaluate.

During this comment period, ATF continued expanding and revising the same regulatory package. On July 6, 2026—the same day comments close for most of the proposed rules discussed in this letter—ATF proposed two additional interrelated NFA rules.¹⁷ Those proposed

Policy Recommendations, Vol. IV, Part IV: Firearms Trafficking Investigations Updates and New Analysis at 3, https://www.atf.gov/sites/default/files2/nfcta_volume_iv_-_part_iv_0.pdf [<https://perma.cc/Z5SU-AK9P>] (last visited July 6, 2026).

¹⁵ See, e.g., Cal. Penal Code §§ 18710 (destructive devices), 32625 (machineguns), 33215 (short-barreled rifles and shotguns), 33410 (silencers); N.Y. Penal Law §§ 265.02; 265.03(1)(a); 265.10; Mass. Gen. Laws ch. 269, §§ 10(c) (machine guns and sawed-off shotguns), 10A (silencers and silencer components); Or. Rev. Stat. § 166.272 (machine guns, short-barreled rifles, short-barreled shotguns, and silencers); Or. Rev. Stat. § 166.382 (destructive devices).

¹⁶ ATF, National Firearms Act Handbook, Ch. 1 at p. 1 (July 9, 2019), <https://www.atf.gov/media/25141/download> [<https://perma.cc/939Q-QUXH?type=standard>].

¹⁷ See "Registering NFA Firearms That Fall Out of Government Contract" (RIN 1140-AA80), 91 Fed.

rules respectively appear to expand the class of NFA firearms that may enter the civilian market while reducing identity-verification requirements for certain NFA applicants, yet neither analyzes its interaction with the other proposals addressed in this letter. The procedural confusion is compounded because RIN 1140-AA63 rewrites the same regulatory provisions—27 C.F.R. §§ 479.63(a) and 479.85(a)—that are also amended by the proposed rules discussed here, as well as ATF’s separate proposed rule titled “Joint Registration for Spouses Under the National Firearms Act” (RIN 1140-AB00), 91 Fed. Reg. 25248 (May 8, 2026), while simply asserting the overlapping amendments are “non-conflicting.”¹⁸ Three pending proposed rules now rewrite the same two regulatory subsections on three different comment schedules, yet ATF nowhere identifies which version of the operative text it ultimately intends to finalize or how those overlapping amendments are meant to operate together. The public and States therefore have not been afforded a meaningful opportunity to comment on the cumulative effect of this continuously evolving regulatory package.

The Administrative Procedure Act (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.”¹⁹ Here, the actual consequence is a coordinated weakening of the NFA regulatory system that was built to prevent the trafficking and widespread use of some of the most dangerous weapons available. ATF cannot avoid that reality by asking the public to comment on the pieces while withholding analysis of the whole.

In evaluating compliance with the APA, a court’s “task is to determine whether the [agency] has considered the relevant factors and articulated a rational connection between the facts found and the choice made.”²⁰ Each of the five proposed rules discussed in this letter shows that this has not been done. The below discussion also identifies examples of significant public safety risks that would flow from these proposed rules.

The undersigned States share ATF’s previously stated belief that it is not “reasonable to wait for an NFA firearm to be used in a significant criminal incident before crafting procedures reasonably calculated to carry out its regulatory mandate to prevent prohibited persons from obtaining NFA firearms.”²¹ Accordingly, the undersigned States urge ATF to carefully consider these comments based on the States’ experience with regulating the manufacturing, sales, transportation, and transfer of firearms, and urge ATF to leave the current form of the regulations in place for the reasons discussed below.

Reg. 40944 (July 6, 2026); “Fingerprint and Photograph Requirements for Firearms Applications” (RIN 1140-AA63), 91 Fed. Reg. 40924 (proposed July 6, 2026).

¹⁸ 91 Fed. Reg. at 40928 n.8, 40943–44.

¹⁹ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

²⁰ *See Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 105 (1983) (citations omitted).

²¹ 81 Fed. Reg. 2669.

SUMMARY OF COMMENTS

This comment letter addresses five proposed rules related to the NFA.

The first proposed rule is titled “The Interstate Transport and Temporary Export of Certain National Firearms Act Firearms” (RIN 1140-AA89), 91 Fed. Reg. 25229 (May 8, 2026). This proposed rule would increase the likelihood that individuals would unlawfully transport affected NFA firearms (destructive devices, machine guns, short-barreled shotguns, and short-barreled rifles) across state lines and simultaneously impair state and local law enforcement’s ability to track affected NFA firearms entering or leaving their jurisdictions. The proposed rule creates definitions for “short-term” and “long-term” interstate transports that are untethered from public safety considerations and would eliminate the need to obtain ATF approval before initiating either type of transport. It also seeks to permit, without explanation, individuals to legally pass through states that prohibit the NFA firearms they are transporting. Existing procedures require applicants to inform themselves of the destination State’s laws, certify that they are traveling to a jurisdiction in which their weapons are legal, and obtain ATF approval *before* initiating the interstate transport promotes public safety or compliance, among other things. The proposed rule does not explain how eliminating these requirements promotes public safety. Nor does it make a meaningful showing of necessity that could overcome relevant public safety considerations. The proposed rule is arbitrary and capricious and contrary to law in violation of the APA because it jeopardizes public safety and departs from the purpose and language of the NFA, the Gun Control Act of 1968 (GCA), and the ATF’s stated purpose.

The second proposed rule, “Removing Chief Law Enforcement Officer (CLEO) Notification” (RIN 1140-AA65), 91 Fed. Regs. 24471 (May 6, 2026), would remove the current requirement that NFA applicants forward a copy of their application to the local chief of police, county sheriff, head of State police, or State or local district attorney or prosecutor before making or transferring an NFA weapon.²² The proposed rule would eliminate the only opportunity for CLEOs to send any objections to an NFA application for ATF consideration. The proposed rule is an inexplicable diversion from ATF’s previous endorsement of the CLEO notification system and fails to identify or consider reasonable regulatory alternatives to fully eliminating the CLEO notification, and thus is arbitrary and capricious. The proposed rule does not substantively address whether ATF consulted state or local law enforcement agencies regarding their current use of CLEO notifications, or whether such notifications have been used to identify applications that would violate a state law or raise other public safety concerns. The proposed rule would undermine the ability of local law enforcement to be prepared when responding to a crime and protect the public.

The third proposed rule, “Allowing Makers to Adopt Certain Markings for NFA Firearms” (RIN 1140-AA70), 91 Fed. Reg. 24466 (May 6, 2026), removes the marking requirement for certain NFA firearms and would make it more difficult for state and local law enforcement to identify and trace NFA firearms in the field. The NFA requires that “anyone making a firearm shall identify each firearm . . . by a serial number which may not be readily removed, obliterated, or altered, the name of the manufacturer, importer or maker, and such other identification as the

²² See 27 C.F.R. §§ 479.62(c), 479.84(c).

Secretary may by regulations prescribe.”²³ ATF lacks statutory authority to remove these marking requirements as it runs contrary to 26 U.S.C. § 5842(a). Under the new proposed rule, federal, state, and local law enforcement will have more difficulty identifying NFA firearms in the field because those firearms will not have an extra set of markings. The proposed rule is also arbitrary and capricious because it is inconsistent with public safety and law enforcement interests. Over fifty years, law enforcement has been able to rely on that additional set of markings as a reliable indicator that a firearm might be an NFA firearm; ATF’s proposed rule dispenses with that history and instead proposes a rule that contradicts the purpose of the NFA and the GCA.

The fourth proposed rule, “Transferring Machine Guns Between Qualified Licensees” (RIN 1140-AA75), 91 Fed. Reg. 24485 (May 6, 2026), would encourage the circulation of dangerous post-1986 machineguns and departs from ATF’s longstanding position that a detailed law letter is required for dealer sale samples. For over two decades, ATF has maintained strict requirements on the manufacture, transfer, and possession of post-1986 machineguns. Under the proposed rule, when a government entity requests a dealer sample, the government would no longer need to explain its need for the machinegun and the specific quantity requested. Thus, the proposed rule would make it easier to transfer these machineguns and in turn encourage misuse of the dealer sales sample process. Significantly lowering the requirements for law letters and dealer sales samples is dangerous and contrary to the purpose of the NFA. ATF’s failure is compounded by the fact that a separate proposed rule would lower the “willful” standard to hold dealers misusing the dealer sales sample process accountable. The combined effect would increase the risk that machineguns will be acquired, retained, transferred, or used outside the narrow government-authority exception Congress preserved, and is thus another example of arbitrary and capricious rulemaking.

The fifth proposed rule, “Clarifying Special Occupational Tax Payments Per Business Activity” (RIN 1140-AA76), 91 Fed. Reg. 24478 (May 6, 2026), would make it cheaper to import, manufacture, and deal in NFA firearms, lowering the barriers to making and selling NFA firearms. However, ATF did not acknowledge, much less seriously consider, the potential costs of making NFA firearms more widely available. The proposed rule is thus arbitrary and capricious. Nor did ATF consider how this change would interact with the other deregulatory actions discussed in this comment that the agency proposes to take with respect to NFA firearms. The proposed rule is also inconsistent with the primary rationale that ATF offered in justifying it—that it is more consistent with the statute and current regulation to impose SOTs based on the categories of business activity identified in 26 U.S.C. § 5801(a) than on GCA licenses—and ATF failed to consider an obvious alternative that would be more consistent with its stated goals.

For reasons discussed in more detailed below, the undersigned States urge ATF to leave the current forms of these regulations in place.

²³ 26 U.S.C. § 5842(a).

DISCUSSION

I. INTERSTATE TRANSPORT AND TEMPORARY EXPORT OF CERTAIN NFA FIREARMS (RIN 1140-AA89), 91 FED. REG. 25229 (MAY 8, 2026)

ATF proposes a change to 27 CFR 478.28, the regulation governing the transport of destructive devices,²⁴ machine guns,²⁵ short-barreled shotguns,²⁶ and short-barreled rifles²⁷ (“affected NFA firearms”) in interstate commerce. The proposed rule would, among other things, create definitions for “short-term”²⁸ and “long-term”²⁹ transports of affected NFA firearms across state lines; eliminate the need to obtain approval before initiating either type of transport using ATF Form 5320.20 (“Form 20”), as is currently required; and eliminate the application and approval process for “short-term” interstate transports altogether. At a minimum, the proposed rule would increase the likelihood that individuals will unlawfully transport affected NFA firearms across state lines into states that generally prohibit their use and possession, and would significantly impair state and local law enforcement’s ability to track NFA firearms entering or leaving their States and localities.

This proposed rule is inconsistent with public safety needs and the policy considerations that motivated the adoption of the NFA and the Gun Control Act of 1968 (“GCA”); ATF has not identified any necessity that justifies the proposed rule; and the proposed rule is contrary to law. The States urge ATF to reconsider this proposed rule and either repeal it wholesale or substantially limit its scope, as discussed below.

A. The Proposed Rule is Arbitrary and Capricious

The existing regulation, 27 CFR 478.28, implements the relevant provision of the GCA, one of the laws that amended the NFA.³⁰ The GCA generally prohibits “any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector” from transporting affected NFA firearms “in interstate or foreign commerce . . . except as *specifically authorized* by the Attorney General *consistent with public safety and necessity*[.]”³¹ However, the proposed rule would drastically overhaul the current interstate transportation framework in a manner that undermines the purpose of the NFA, GCA, and important policy and public safety considerations.

²⁴ “Destructive device” is defined in 18 U.S.C. § 921(a)(4).

²⁵ “Machine gun” is defined in 26 U.S.C. § 5845(b).

²⁶ “Short-barreled shotgun” is defined in 18 U.S.C. § 921(a)(6).

²⁷ “Short-barreled rifle” is defined in 18 U.S.C. § 921(a)(8).

²⁸ See 91 Fed. Reg. 25230 (defining the duration of “short-term” interstate transports of affected NFA firearms as “365 days or fewer.”).

²⁹ See *id.* (defining the duration of “long-term [interstate transports] or permanent moves” as “more than 365 days[.]”).

³⁰ ATF, “National Firearms Act,” <https://www.atf.gov/rules-and-regulations/laws-alcohol-tobacco-firearms-and-explosives/national-firearms-act> (last visited June 17, 2026).

³¹ 18 U.S.C. § 922(a)(4) (emphases added).

First, the proposed rule does not adequately state how its suggested practices are “consistent with public safety[.]”³² For example, it acknowledges that “an approved Form 20 may have some value to other law enforcement agencies to verify the firearm being transported is registered,” and that “[p]erhaps the most valuable service provided by Form 20 is for ATF to check whether it is lawful to possess the NFA firearm in the destination state.”³³ Indeed, the current Form 20 requires applicants to provide details regarding the firearms or devices to be transported, the origin and destination of the transport, and the mode of transportation.³⁴ Requiring that this information be provided and reviewed *before* affected NFA firearms are transported furthers a number of important policy and public safety considerations including, but not limited to, the GCA’s goal to facilitate the prevention of crime and violence at the federal, state, and local levels, and the maintenance of an accurate National Firearms Registration and Transfer Record (NFRTR),³⁵ which facilitates law enforcement officials’ ability to track the movement of NFA firearms.

The proposed rule disregards public safety benefits like these by assuming, without data or evidence, that those who travel with NFA weapons will identify the relevant state laws for themselves.³⁶ The proposed rule similarly includes no indication that ATF considered data regarding crimes, arrests, prosecutions, convictions, or public safety issues related to the interstate transport of affected NFA firearms or dangerous weapons, or other information important for performing a meaningful public safety assessment. It is unclear how eliminating requirements that applicants inform themselves and certify that they are traveling to a jurisdiction in which their weapons are legal promotes public safety or compliance. Nor does the proposed rule explain how such a change falls within “a critical part of ATF’s mission”—“regulat[ing] the lawful commerce in firearms to help prevent diversion of these firearms from the legal to the illegal market.”³⁷ In sharing data regarding Form 20 applications between 2020 and 2025, ATF reveals at least hundreds of instances in which the application process may have directly prevented the unlawful transfer of uniquely dangerous weapons.³⁸ And that data does not include the number of individuals who may have learned through the process of having to complete the application that their intended destination state prohibited the firearms they wished to transport, ultimately causing them to forego an application. The proposed rule also does not

³² GCA § 922, Pub. L. No. 90-618, 82 Stat. 1213, 1217.

³³ 91 Fed. Reg. 25230.

³⁴ ATF, “Application to Transport Interstate or to Temporarily Export Certain National Firearms Act (NFA) Firearms,” <https://www.atf.gov/media/22376/download> (last visited June 17, 2026).

³⁵ The NFRTR is the central registry of all NFA firearms not belonging to the federal government. It includes information about the identification of the firearm, the date of registration, and the identification and address of the person entitled to possess the firearm. ATF, National Firearms Handbook 23 (2009), <https://www.atf.gov/media/25161/download>.

³⁵ 26 U.S.C. § 5842(a).

³⁶ 91 Fed. Reg. 25232. (“a majority of owners of affected NFA firearms who travel with them . . . tend to be prepared and make arrangements well in advance”).

³⁷ ATF, National Firearms Commerce and Trafficking Assessment: Firearms in Commerce, Vol. I, Foreword at 9, <https://www.atf.gov/media/26676/download> [<https://perma.cc/CUJ7-DG55>] (last visited July 6, 2026).

³⁸ *Id.*

take into account the exponential increases in NFA applications more generally, or ATF's own data that shows a steady annual increase in the number of firearms reported on Forms 20 alone.³⁹ And while the proposed rule states that the GCA itself would remain in place, that does not obviate the need for regulations that facilitate the public's compliance with the GCA and its important safety goals.⁴⁰

Second, the proposed rule does not explain or justify the creation of two separate categories of interstate transports of affected NFA firearms: "short-term," and "long-term or permanent moves," or the proposal to eliminate pre-transport ATF approval for both categories. Nor does it include information to suggest that one is safer than the other, a conclusion that seems to be implied in the proposal to do away with the application and approval process for "short-term" transfers altogether. Indeed, among other results, bad actors could more easily lie about the "short-term" nature of their transport and make it functionally impossible for law enforcement officials to track these individuals. The proposed rule also does not explain the rationale behind defining "short-term" transfers as those that last up to 365 days—a lengthy duration that would not ordinarily be considered short-term. Information in the proposed rule, however, indicates that 78% of current Form 20 transportation requests are for travel under 365 days, whereas 22% of such requests are for travel over 365 days.⁴¹ In other words, it appears that ATF chose 365 days as the cut-off in order to relieve 78% of Form 20 applicants from having to file anything at all and maximize the proposed exemption. That rationale is arbitrary and capricious and not grounded in public safety,⁴² and is no substitute for the reasoned, safety-based justification the GCA requires. The proposed rule likewise suggests a seemingly unworkable and even more burdensome process for long-term transfers: requiring individuals whose applications are rejected after a transport is initiated or completed to take certain action, including contacting ATF for case-by-case troubleshooting or returning to the place where the transport originated.⁴³ Such a process could also subject individuals to criminal consequences for illegally possessing uniquely dangerous firearms in their destination state.

Third, the proposed rule does not justify any "necessity[.]" It states that "ATF believes that Form 20 has become an unnecessary regulatory hurdle."⁴⁴ It also cites data seeking to illustrate the burden applicants experience by complying with the existing regulation,⁴⁵ and states that this proposal would "ease burdens generally by minimizing paperwork up front . . . and enabling more flexibility[.]" and reducing "uncertainties" applicants might experience while waiting for approval.⁴⁶ It is not clear, however, how the time it takes to complete the application process—including the "opportunity costs . . . on the person's free time or 'leisure time'"—before

³⁹ ATF, National Firearms Commerce and Trafficking Assessment, Vol. 1, Appendix N—NFA at 307-08, <https://www.atf.gov/media/26771/download> [<https://perma.cc/5HEA-GM4S>] (last visited July 6, 2026).

⁴⁰ See Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, 4 J. Legal Stud. 133 (1975).

⁴¹ 91 Fed. Reg. 25232.

⁴² See *State Farm*, 463 U.S. at 43 (an agency rule is normally arbitrary and capricious if it "entirely failed to consider an important aspect of the problem").

⁴³ 91 Fed. Reg. 25231.

⁴⁴ 91 Fed. Reg. 25231.

⁴⁵ 91 Fed. Reg. 25233.

⁴⁶ 91 Fed. Reg. 25232.

transporting some of the most dangerous weapons in the nation across state lines, including for lengthy durations, outweighs the need to promote public safety and law enforcement officials' ability to track these weapons.⁴⁷

The burden arguments are also undercut by ATF's other NFA-related materials and the proposed rule's own explanations. The proposed rule proffers a hypothetical scenario in which an individual who wants to travel with an affected NFA firearm across state lines on a regular basis to go to a shooting range. The proposed rule suggests that the process for obtaining permission to do so is too burdensome, because the individual would have to submit a form for every such trip.⁴⁸ This hypothetical ignores that ATF's own *National Firearms Handbook* allows ATF to issue approvals for up to one year for "a person [who] will be transporting his/her firearm(s) to the same location on a continual basis."⁴⁹ Indeed, the handbook addresses the very same hypothetical: "the person lives in State A and wants to transport his/her firearm to a site in State B where competitions and shoots occur several times a year (State B allows possession of the particular firearm). The person may request permission for a 1-year period to transport the firearm interstate to the site for competitions and shoots."⁵⁰ The primary hypothetical the proposed rule provides to demonstrate an alleged burden is thus something that ATF already permits through its existing processes.

The proposed rule describes delays in processing the Form 20 as another alleged burden. But the proposed rule itself undercuts this reasoning by stating, as mentioned above, that "a majority of owners of affected NFA firearms who travel with them for exhibitions, shows, contests, and shooting events, tend to be prepared and make arrangements well in advance. *This means such individuals generally are not delayed by this application processing time.*"⁵¹ The justification is further undercut by the proposed rule's explanation that as of September 30, 2025, the Form 20 can be submitted electronically via ATF's eForm system.⁵² Making the Form 20 available in the eForm system has cut the review time by one-third: the average processing time for an eForm application is only three days, compared to nine days for a paper application.⁵³ ATF acknowledges that this change "has already improved the current process's efficiency," which is consistent with trends that ATF has seen when it previously made other forms available for online processing.⁵⁴ Because the Form 20 became available for electronic submission less than one year ago, ATF should wait to see if the processing times for Form 20s continue to decrease before proposing changes to the existing form and related processes.

⁴⁷ *Id.*

⁴⁸ 91 Fed. Reg. 25230.

⁴⁹ ATF, National Firearms Act Handbook, Section 13.8.3 at p. 83 (revised April 2009), <https://www.atf.gov/media/25161/download> [<https://perma.cc/246N-YCNN>].

⁵⁰ *Id.*

⁵¹ 91 Fed. Reg. 25232 (emphasis added).

⁵² 91 Fed. Reg. 25230.

⁵³ *Id.*

⁵⁴ See ATF, National Firearms Commerce and Trafficking Assessment: NFCTA Updates, New Analysis, and Policy Recommendations, Vol. IV, Part I: Firearm Commerce Updates and New Analysis at 26, <https://www.atf.gov/firearms/docs/report/nfcta-volume-iv-part-i-firearm-commerce-updates-and-new-analysis/download> [<https://perma.cc/6U3N-DUHR>] (last visited July 6, 2026).

The proposed rule also describes how most denials of a Form 20 submission from January 2020 to May 2025 were due to a “technical error,” but does not explain what that phrase means other than to imply that it means “the form was not properly completed.”⁵⁵ Nor does the proposed rule explain whether these “technical error” denials were reduced by the availability of eForm application submissions, or how many such “technical errors” were quickly cured in revised submissions. Regardless, if this is indeed an issue, then ATF should consider providing clearer instructions on the Form 20 rather than lifting the requirement to file the form in most circumstances—an alternative that apparently was not considered by ATF.⁵⁶

The proposed rule also suggests that it would increase, rather than decrease the burdens and legal risks for registered NFA weapon owners who travel. Specifically, because ATF will be abdicating the responsibility of checking state laws to confirm that transportation of the NFA weapon is lawful, the proposed rule will be “potentially adding both burden and risk to such travel as [affected NFA firearm owners] might not understand state and local law, might not realize they should check it ahead of time, or might believe federal law supersedes state or local law. The same is true with respect to tribal law.”⁵⁷ Additionally, if an applicant provides notice to ATF that they will be engaging in “long-term” travel of 365 days or more, and ATF subsequently rescinds authorization after travel has begun, the applicant will then be left with options that are all more burdensome than if they had just waited for ATF approval before initiating the interstate transport (i.e., the current process). ATF explains the person would “have to stop transporting the firearm” or “return home with the firearm,” and “immediately contact the ATF field division for guidance.”⁵⁸ As mentioned above, such an individual could be subject to criminal liability if ATF determines that their affected NFA firearm is illegal to possess in the state to which they have traveled.

Finally, the proposed rule claims to “clarify” that those traveling with an affected NFA firearm can pass through a state that prohibits the firearm they are transporting, so long as the individual complies with the requirements of 18 U.S.C. § 926A (e.g., the firearm is unloaded and is not readily available from the vehicle’s passenger compartment).⁵⁹ But ATF has not identified any authority demonstrating an indication of Congressional intent to extend 18 U.S.C. § 926A to NFA weapons. And the proposed rule does not evaluate any data or evidence, provide any explanation for this change, or assess its impact on public safety. In other words, the proposed rule fails to evaluate the public safety risks posed by an individual driving with a machinegun, explosive device, or other affected NFA firearm in a state whose laws prohibit possession of such items.⁶⁰

⁵⁵ 91 Fed. Reg. 25232.

⁵⁶ See 91 Fed. Reg. 25233-25234.

⁵⁷ 91 Fed. Reg. 25233.

⁵⁸ 91 Fed. Reg. 25231.

⁵⁹ *Id.*

⁶⁰ *Id.*; see, e.g., Cal. Penal Code §§ 18710 (destructive devices), 32625 (machineguns), 33215 (short-barreled rifles and shotguns), 33410 (silencers); N.Y. Penal Law §§ 265.02; 265.03(1)(a); 265.10; Mass. Gen. Laws ch. 269, § 10(c); ch. 140, §§ 121, 131; ch. 266, §§ 101, 102(c).

B. The Proposed Rule is Contrary to Law

As previously discussed, 27 CFR 478.28 implements the relevant provision of the GCA—one of the laws that amended the NFA⁶¹—which generally prohibits transporting affected NFA firearms across state lines except as “specifically authorized by the Attorney General consistent with public safety and necessity[.]”⁶² Consistent with a stated purpose of the NFA—regulating dangerous weapons in the country and addressing violent crime—the GCA is meant “to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence[.]”⁶³

In a similar vein, the existing 27 CFR 478.28 prohibits persons who are not federal firearms licensees (FFL)⁶⁴ or special occupational taxpayers (SOT)⁶⁵ from transporting affected NFA firearms across state lines, regardless of the duration of the transport, until they have “received specific authorization to do so from the Director.”⁶⁶ Requiring applicants to request authorization to transport affected NFA firearms across state lines via Form 20 makes important information available to law enforcement officials, as discussed above.⁶⁷

The existing regulation and Form 20 also require applicants to certify that the transport would not violate the laws of the destination state and provide the reason for the transport.⁶⁸ It also requires ATF to issue a decision on applications *before* interstate transports of affected NFA firearms are initiated.⁶⁹ These practices assist with vetting and preempting illicit or unjustifiable movements of dangerous firearms and devices, and also assist States with ensuring compliance with their laws. The exercise of completing these applications requires applicants to be intentional about their plans and help ensure that individuals will inform themselves of and comply with laws in destination states that may restrict or prohibit possession of affected NFA firearms. Consistent with the GCA’s requirement that authorized interstate transport be “consistent with public safety[.]”⁷⁰ the existing application process can reduce the likelihood that

⁶¹ ATF, “National Firearms Act,” <https://www.atf.gov/rules-and-regulations/laws-alcohol-tobacco-firearms-and-explosives/national-firearms-act> (last visited June 17, 2026).

⁶² 18 U.S.C. § 922(a)(4).

⁶³ GCA, § 101, Pub. L. No. 90-618, 82 Stat. 1213.

⁶⁴ “FFL” means a federal firearms licensee, person, or entity having a license to import, manufacture, or deal in firearms under the GCA. ATF, National Firearms Act Handbook, Ch. 1, Section 1.2.6 at 2 (rev. Apr. 2009), <https://www.atf.gov/media/25161/download> [<https://perma.cc/246N-YCNN>].

⁶⁵ “SOT” means a special occupational taxpayer, a person or entity qualified to import, manufacture, or deal in NFA firearms by having paid the special (occupational) tax to do so under the NFA. ATF, National Firearms Act Handbook, Ch. 1, Section 1.2.11 at 2 (rev. Apr. 2009), <https://www.atf.gov/media/25161/download> [<https://perma.cc/246N-YCNN>].

⁶⁶ 27 CFR 478.28; *see* 18 U.S.C. § 922(a)(4); *see also* ATF, National Firearms Act Handbook, Ch. 13, Section 13.8 at 83 (rev. Apr. 2009), <https://www.atf.gov/media/25081/download> [<https://perma.cc/246N-YCNN>].

⁶⁷ *See* 27 CFR 478.28.

⁶⁸ 27 CFR 478.28(a)(1), (a)(7).

⁶⁹ 27 CFR 478.28(b).

⁷⁰ GCA § 922, Pub. L. No. 90-618, 82 Stat. 1213, 1217.

dangerous firearms and devices will be moved across state lines carelessly, and also reduce the risk of avoidable public safety and criminal consequences.

In drafting the GCA to require that interstate transports of affected NFA firearms be “specifically authorized,” it appears that Congress intended to authorize individual exemptions to a general prohibition on the interstate transfer of particularly dangerous weapons.⁷¹ The proposed rule would eliminate the existing process of issuing individualized exemptions.⁷² But it does not explain how absolving “short-term” interstate transporters from obtaining approval at all, and “long-term” interstate transporters from obtaining approval before initiating the transport—in other words, a blanket pre-authorization of the interstate transport of affected NFA firearms—satisfies the GCA’s requirement that such transports be “specifically authorized[.]” The proposed rule simply states that the “GCA does not specify how the Attorney General is to give approval” and that the “current Form 20 authorization protocol . . . is not necessary or required by the statute.”⁷³ Such statements do not justify the complete elimination of the pre-transportation approval process, or the entire application process for “short-term” interstate transports.

The blanket pre-authorization approach taken by this proposed rule is a far departure, without any concrete basis, from the existing requirements that ATF “may” give “specific authorization” for any interstate transportation of an NFA weapon if ATF finds “such transportation is reasonably necessary and is consistent with public safety and applicable State and local law.”⁷⁴ By foregoing the assessment of each individual application to ensure these requirements are met, and replacing such individualized determinations with a blanket pre-authorization, ATF is abdicating its responsibility to ensure that applicants are not violating federal or state laws.

The proposed rule, if adopted, would undermine the GCA’s plain language and related policy goals and safeguards. In short, it would make the transport of dangerous weapons across state lines almost effortless, while curtailing State and local law enforcement’s ability to track these weapons.

C. ATF Fails to Seriously Consider Alternatives to the Proposed Rule

Regardless of the duration of the transport, individuals seeking to transport affected NFA firearms across state lines should be required to seek approval for the transport *before* initiating the transport, and an approval or denial should be issued *before* the transport is initiated. Anything less would, at a minimum, undermine State and local law enforcement officials’ ability to enforce their laws, create public safety issues, and interfere with state sovereignty. As mentioned, the GCA permits transport of these weapons only “as specifically authorized by the Attorney General consistent with public safety and necessity.”⁷⁵ That language imposes two distinct conditions, and the proposed rule satisfies neither. First, the proposed rule does not

⁷¹ *Id.*

⁷² 91 Fed. Reg. 25230

⁷³ *Id.*

⁷⁴ 27 C.F.R. § 478.28.

⁷⁵ 18 U.S.C. § 922(a)(4); *see supra* § I.A.

explain how a blanket preauthorization that exempts an entire class of transports from any application or approval can be squared with Congress's requirement that transport be "specifically authorized." Second, ATF has made no finding that eliminating pre-transport review and creating a year-long "short-term" window is "consistent with public safety and necessity." Instead, it recites the burden the process imposes on applicants without explaining how dispensing with that process serves public safety, and it identifies no necessity the existing process fails to accommodate. An agency may not satisfy a statutory condition by omitting such findings.⁷⁶

The APA also required ATF to consider less-destructive alternatives before discarding pre-transport review wholesale. Without endorsing any of them, the States note that ATF did not address alternatives like setting any "short-term" window well below 365 days and requiring post-transport notice to the destination State in lieu of pre-transport approval. As an alternative to the proposed rule, the States would not object to efforts to streamline the application and approval process—consistent with ATF's existing effort to make the Form 20 available for electronic submission—so long as those efforts do not reduce the current oversight of interstate transportation of affected NFA firearms. The proposed rule does not give serious consideration to this alternative, and simply rejects it because it would allegedly "continue to impose unnecessary burdens on the public without commensurate benefits."⁷⁷ But that claim is undercut by other acknowledgements in the proposed rule and ATF's other publications regarding the NFA, as explained above. The proposed rule's failure to seriously engage in the consideration of regulatory alternatives demonstrates a lack of reasoned decision-making.

II. REMOVING CHIEF LAW ENFORCEMENT OFFICER (CLEO) NOTIFICATION UNDER THE NFA (RIN 1140-AA65), 91 FED. REG. 24471 (MAY 6, 2026)

ATF proposes to discontinue the requirement that NFA applicants forward a copy of their application to the chief law enforcement officer ("CLEO") of the locality in which the applicant is located. Under the current version of 27 C.F.R. §§ 479.62(c) and 479.84(c), an applicant seeking to make or transfer an NFA weapon must forward their completed Form 1 (for making an NFA weapon) or Form 4 (for transferring an NFA weapon) to the local chief of police, county sheriff, head of State police, or State or local district attorney or prosecutor before submitting the application to ATF.

Discontinuing this notification will eliminate the only opportunity for CLEOs to send any objections to an NFA application for ATF consideration. The proposed rule is an inexplicable diversion from ATF's previous endorsement of the CLEO notification system, and fails to identify any reasonable regulatory alternatives to fully eliminating the CLEO notification. There is no concrete indication in the proposed rule that ATF consulted state and local law enforcement

⁷⁶ See *State Farm*, 463 U.S. at 43 ("Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.").

⁷⁷ 91 Fed. Reg. 25233.

agencies regarding their current use of CLEO notifications and whether such notifications have been used to identify applications that would violate a state law or raise other public safety concerns.

A. The Proposal to Fully Eliminate the CLEO Notification is Arbitrary and Capricious

As the proposed rule notes, ATF previously required certification by the CLEO before submission of the application to ATF. In 2016, ATF changed the certification requirement to a notice-based system.⁷⁸ ATF explained that it “concur[red]” that the “benefits of CLEO certification do not outweigh the costs of the CLEO certification requirement.”⁷⁹ However, ATF embraced a CLEO notification requirement because a notice still “fulfills the primary objectives that have supported the certification requirement.”⁸⁰ Specifically, the CLEO notification “provides the CLEO awareness that a resident of the CLEO’s jurisdiction has applied to make or obtain an NFA weapon and affords the CLEO an opportunity to provide input to ATF of any information that may not be available during a Federal background check indicating the applicant is prohibited from possessing firearms.”⁸¹ These benefits remain relevant, despite the proposed rule’s unsubstantiated claim that “law enforcement agencies simply discard these notices.”⁸²

There is no indication in the proposed rule that ATF consulted with state or local law enforcement agencies regarding their current use of CLEO notifications and whether such notifications have been used to object to NFA applications. The proposed rule briefly and ambiguously mentions “general feedback” that “agencies simply discard these notices.”⁸³ But there is no discussion regarding how many agencies ATF consulted, which agencies provided such feedback, and whether there were comments from agencies which were inconsistent with the “general feedback.” This suggests that ATF failed to seriously engage with the state and local law enforcement agencies that would be primarily impacted by this proposed rule.

When ATF switched from a CLEO certification to a CLEO notification system, ATF specifically rejected the idea from public comments to exempt “certain categories of persons and certain types of NFA firearms from CLEO certification” or notice.⁸⁴ ATF made clear that “all applicants” and “all types of NFA firearms” “will be subject to the notification requirement.”⁸⁵ The proposed rule lacks any explanation as to why ATF now wants to exempt all applicants and all types of NFA weapons from the notification requirement by abandoning the requirement wholesale. Notably, the proposed rule additionally fails to acknowledge that this is a change in position.

⁷⁸ 91 Fed. Reg. 24473; *see also* 81 Fed. Reg. 2682.

⁷⁹ 81 Fed. Reg. 2682.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² 91 Fed. Reg. 24473.

⁸³ 91 Fed. Reg. 24473.

⁸⁴ 81 Fed. Reg. 2683.

⁸⁵ *Id.*

When an agency changes course, the Administrative Procedure Act requires more than a new policy preference. 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; and where the prior policy engendered serious reliance interests, ATF must assess and weigh those interests rather than ignore them. ATF endorsed CLEO notification in 2016 because it gave local law enforcement awareness of NFA applications and an opportunity to supply information unavailable through a federal background check. ATF's proposal to eliminate the notice entirely, on the unsupported assertion that agencies do not use it, neither acknowledges the factual findings underlying the 2016 position nor confronts the reliance interests that position created. That is the paradigm of an unexplained, and therefore arbitrary, reversal.⁸⁶

The proposed rule also fails to identify or consider regulatory alternatives. Instead of considering alternatives that could improve the alleged unusefulness of the CLEO notification, ATF simply proposes to eliminate the requirement. As noted above, the proposed rule claims that law enforcement agencies are discarding the CLEO notifications but fails to provide any evidence or even anecdotes. Even if that were true, ATF should consider less drastic alternatives.

For example, ATF could implement a system to ensure that the proper law enforcement agency and point of contact has been designated for each jurisdiction's CLEO notifications. Alternatively, ATF could more specifically identify which agency or types of agencies should receive the notification, such as directing notice to a State-designated recipient. Another alternative is to permit State and local law enforcement authorities to opt out of receiving CLEO notifications or opt into accepting only electronic notifications, or require ATF to work with law enforcement agency partners to identify the agencies that would find these CLEO notifications to be the most useful. The proposed rule failed to address any of these alternatives.

B. The Proposal to Fully Eliminate the CLEO Notification Will Impede State and Local Law Enforcement

The proposed rule fails to recognize that the notification allows CLEOs to track NFA firearms within their jurisdiction, as the ATF itself previously recognized in 2016.⁸⁷ Tracking NFA firearms is an important tool in protecting law enforcement personnel and the public. Several states require reporting of firearm sales and transfers to either state or local authorities and those authorities maintain a database of firearm records that can be accessed by law enforcement for the limited purpose of protecting public safety.⁸⁸ For example, California maintains the Armed Prohibited Persons System (APPS), which informs law enforcement when a person who has legally purchased firearms subsequently becomes prohibited from possessing firearms.⁸⁹ The APPS also allows law enforcement personnel responding to a crime to access

⁸⁶ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30-33 (2020).

⁸⁷ 81 Fed. Reg. 2682.

⁸⁸ See, e.g., Cal. Penal Code §§ 11106, 27560, 28255; N.J. Stat. Ann. § 2C:58-3(h); N.Y. Penal Law §§ 400.00(5), 400.02..

⁸⁹ See, e.g., Cal. Pen. Code § 30000.

these records and determine whether they are likely to encounter a person armed with a firearm.⁹⁰ Similarly, notification of an NFA application to CLEOs would facilitate determining whether prohibited persons illegally possess NFA firearms and whether a person involved in a crime possesses an NFA firearm, which will allow law enforcement officers tasked with investigating a crime or apprehending a suspect to take necessary steps to protect themselves. Accordingly, the proposed rule's unsubstantiated claim that the "CLEO notification may not meaningfully aid criminal investigations or serve a significant purpose for local law enforcement,"⁹¹ is simply inaccurate.

ATF's proposed rule discontinuing the notification requirement to CLEOs would undermine the ability of local law enforcement to be prepared when responding to a crime and protect the public. Accordingly, the States urge ATF to withdraw the proposed rule and continue requiring NFA applicants to notify CLEOs, and to consider alternatives on how to improve the CLEO notification process to the extent there is any evidence (which is not currently in the proposed rule) that the current scheme is ineffective.

III. ALLOWING MAKERS TO ADOPT CERTAIN MARKINGS FOR NFA FIREARMS (RIN 1140-AA70), 91 FED. REG. 24466 (MAY 6, 2026)

The proposed rule removes the marking requirement for certain NFA firearms and would make it more difficult for states and local law enforcement to identify and trace NFA firearms in the field. The NFA marking requirement plays a crucial role in bridging the gap between state and local databases and the NFRTR, which is not easily accessible by state and local law enforcement. By removing the need to pay for professional marking services, the proposed rule renders the making of these dangerous weapons significantly cheaper and thus more accessible, which runs contrary to ATF's stated purpose for the NFA.

ATF's proposed rule seeks to amend 47 CFR § 479.102(b)(3), which lists exceptions to the marking requirement. Under the proposed rule, a "maker" of an NFA firearm would no longer be required to stamp the frame or receiver of the firearm with their name, city, and state. This has practical implications for state and local law enforcement that were not properly considered by ATF in their notice of proposed rulemaking.

A. ATF Lacks Statutory Authority to Remove Marking Requirements for "Makers"

The proposed rule exceeds ATF's statutory authority and is ultra vires and contrary to law. The NFA states in relevant part, "[e]ach manufacturer or importer and anyone making a firearm

⁹⁰ The reliance is at least as strong in other States. In Massachusetts, for example, the local chief of police is both the CLEO and the State firearms "licensing authority," so CLEO notice delivers—to the very official empowered to suspend or revoke a license or to seek an extreme-risk protection order—awareness of an NFA acquisition that the federal background-check system does not include. In States where the CLEO is not the licensing authority, the harm is even more direct because the federal notice is the only channel that brings an NFA application to the attention of local law enforcement. Eliminating the notice withdraws information on which these state and local systems have relied since 2016.

⁹¹ 91 Fed. Reg. 24474.

shall identify each firearm, other than a destructive device, manufactured, imported, or made by a serial number which may not be readily removed, obliterated, or altered, the name of the manufacturer, importer, or maker, and such other identification as the Secretary may by regulations prescribe.”⁹² Specifically, the NFA requires that “anyone making a firearm shall identify each firearm . . . by a serial number which may not be readily removed, obliterated, or altered, the name of the manufacturer, importer or maker, and such other identification as the Secretary may by regulations prescribe.”⁹³ Thus, ATF’s proposed rule exceeds its statutory authority.

The law permits ATF to add additional “identification” or marking requirements, but it does not allow for the marking requirement to be stripped away. For this reason alone, the States urge ATF to withdraw the proposed rule.

B. The Proposed Rule Interferes with Federal, State, and Local Law Enforcement’s Ability to Identify NFA Firearms in the Field

ATF mistakenly claims that the “marking requirement for a maker is burdensome and unnecessary, and that it does not enhance public safety.”⁹⁴ That is simply not the case. The marking requirement plays a vital public safety purpose, making it much easier for law enforcement to identify NFA firearms in the field. For example, a maker converts their Title I shotgun into a Title II short-barreled shotgun by shortening the barrel by a few inches. When a local or state law enforcement officer runs the serial number of this shotgun, the standard National Crime Information Center (NCIC) database will show the original Title I/GCA registration. The marking requirement currently offers law enforcement a way to immediately identify these firearms in the field: the firearm will have at least two markings, one from the original manufacturer and/or importer and a second marking from the “maker” of the NFA firearm.⁹⁵ Upon seeing multiple markings, law enforcement can immediately deduce they might be in possession of an NFA firearm and then can request the federal government conduct a proper search of the NFRTR database.⁹⁶

Instead of utilizing this relatively straightforward process, ATF suggests that law enforcement could trace these weapons by going to the first retail purchaser based on the original manufacturer serial number.⁹⁷ The FFL could then run the serial number and would be able to show that the firearm is a registered NFA firearm. But law enforcement would only know to do

⁹² 26 U.S.C. § 5842(a).

⁹³ 26 U.S.C. § 5842(a).

⁹⁴ 91 Fed. Reg. 244467.

⁹⁵ ATF argues that having multiple serial numbers is confusing. But on the contrary, they are important markers that explain the history of the firearm.

⁹⁶ In the NFA Handbook, ATF explains that completed NFA forms are treated as “tax returns and registration information in the NFRTR is considered to be tax return information.” ATF, National Firearms Handbook 25-26 (2009), <https://www.atf.gov/media/25161/download> [<https://perma.cc/246N-YCNN>]. As a result, “ATF is generally prohibited from disclosing tax returns and tax return information” under 26 U.S.C. §6103. *Id.*

⁹⁷ 91 Fed. Reg. 24468.

this if they first have a suspicion that a Title I/GCA firearm is actually a Title II/NFA firearm. Without additional NFA markings, NFA firearms will more easily be misidentified and miscategorized by busy state law enforcement agencies that are already overburdened and may not have the same level of firearm classification expertise as ATF. Therefore, ATF's finding that "ATF does not anticipate that allowing makers to adopt the existing manufacturer's markings would negatively impact law enforcement's ability to trace an NFA firearm" is unfounded.⁹⁸

Moreover, in the notice of proposed rulemaking, ATF states that the marking requirement is burdensome and unnecessary because the frame or receiver "may be crowded with existing markings from the original manufacturer."⁹⁹ No meaningful data or evidence is presented to support this alleged benefit. Indeed, even if this claim was properly supported, it is not being properly weighed against the important public safety and law enforcement interests mentioned above.

C. The Proposed Rule Is Arbitrary and Capricious

The proposed rule is also arbitrary and capricious. Given the clear law enforcement interests outlined above, the current marking requirements for NFA firearms have a significant role in promoting public safety. In its notice of proposed rulemaking, ATF has failed to properly consider the practical benefits of separate marking requirements for law enforcement in identifying and tracing NFA firearms. ATF failed to consider the significant drawbacks of their proposed rule, which are highlighted by the fact that the fourth alternative proposed rule, which would remove all marking requirements for all NFA makers, is the only alternative that highlights these identification and tracing concerns.

For over fifty years, state and local law enforcement has been able to rely on markings made on NFA weapons as a reliable indicator that the firearm in their possession might be an NFA firearm.¹⁰⁰ These markings have acted as an important catalyst in firearm tracing, which ATF has previously recognized as "an integral part of any investigation involving the criminal use of firearms", allowing "law enforcement agencies to identify suspects involved in criminal violations, determine if the firearm is stolen, and provide other information relevant to an investigation."¹⁰¹ The proposed rule is a significant departure from a longstanding practice that was not adequately addressed or reasonably considered in ATF's proposed rulemaking.

D. The Proposed Rule Contradicts the Purpose of the NFA and the GCA

While it may be true that the cost of professional marking services can disincentivize the making of NFA firearms,¹⁰² as outlined above, those markings play a crucial role for law enforcement seeking to trace these firearms. Moreover, encouraging the acquisition of NFA firearms is dangerous and counter to the original purposes of the NFA. Eliminating marking

⁹⁸ 91 Fed. Reg. 24468.

⁹⁹ 91 Fed. Reg. 24467.

¹⁰⁰ 26 U.S.C. § 5842.

¹⁰¹ 66 Fed. Reg. 40597.

¹⁰² The notice of proposed rulemaking states the average gunsmithing marking service costs \$54. 91 Fed. Reg. 24468. That cost is a low price to pay for the public safety benefits outlined above.

requirements will only continue to encourage the acquisition of these firearms at an unprecedented rate.

Moreover, in previous rulemaking efforts related to marking requirements, ATF has recognized that “[o]ne of the principal objectives of the GCA is to facilitate the tracing of firearms used in crime ‘to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence.’”¹⁰³ ATF contradicts this principal objective identified in pursuit of its new proposed rule.

Accordingly, the States urge ATF to withdraw the proposed rule. The States urge ATF to reconsider the first regulatory alternative in the notice of proposed rulemaking, which would maintain the status-quo and involve ATF taking no action.¹⁰⁴ As outlined above, this alternative would have the additional benefit of promoting public safety and assist state and local law enforcement in tracing illegal firearms.

For similar reasons, the second alternative in the notice of proposed rulemaking, which would rescind the requirement that individuals making an NFA firearm re-mark the firearm and allow them to adopt the manufacturer or importer’s markings¹⁰⁵ would, like the proposed rule, make it more difficult for law enforcement to identify NFA firearms in the field, and thus also threatens public safety and law enforcement’s ability to trace illegal firearms.

The third alternative, which suggested issuing guidance without formally rescinding the marking requirement, would have the same detrimental effects as the other alternatives and the proposed rule while also not having the force of law. This alternative would have the added cost of undoubtedly creating confusion in what the NFA actually requires.

And finally, the fourth alternative proposal would remove all marking requirements for all NFA makers, including those makers who create their NFA firearm from scratch with raw materials. The undersigned States agree with the proposed rule’s statement that it would violate the law requiring NFA firearms be marked, and registered in the NFRTR, and pose a significant public safety risk with regards to tracing.

IV. TRANSFERRING MACHINE GUNS BETWEEN QUALIFIED LICENSEES (RIN 1140-AA75), 91 FED. REG. 24485 (MAY 6, 2026)

The proposed rule encourages the circulation of dangerous post-1986 machineguns and departs from ATF’s longstanding position that a detailed law letter is required for dealer sale samples. The proposed rule significantly undercuts the underlying purpose of the NFA by encouraging the criminal misuse of the dealer sales sample process and the circulation and criminal misuse of machineguns.

¹⁰³ 66 Fed. Reg. 40597.

¹⁰⁴ 91 Fed. Reg. 24468.

¹⁰⁵ 91 Fed. Reg. 24468.

Under 18 U.S.C. § 922(o), it is unlawful for any person to transfer or possess a machinegun. There are only two statutory exceptions for transferring machineguns: (1) machineguns that were lawfully possessed before May 19, 1986, also referred to as pre-1986 machineguns,¹⁰⁶ and (2) machineguns that are transferred, possessed, or under the authority of the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof.¹⁰⁷ Taken together, section 922(o) prohibits post-1986 machineguns for civilian use. Generally, post-1986 machineguns may only be transferred to, or possessed by, a government entity.

The proposed rule would amend an even narrower exception to that general rule: the process in which government entities may request a machinegun sample from a dealer.¹⁰⁸ Under 27 CFR 479.105(d), a post-1986 machinegun may be transferred to a qualified licensee as a “dealer sales sample.” The regulation permits the transfer or import of a post-1986 machinegun “if it is established by specific information expected governmental customers who would require a demonstration of the weapon, information as to the availability of the machine gun to fill subsequent orders, and letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular weapon,” such letters are called “law letters.”¹⁰⁹

A. The Proposed Rule Represents a Change in Position Regarding Longstanding NFA “Law Letter” Requirements

For over two decades, ATF has maintained strict requirements on the manufacture, transfer, and possession of post-1986 machineguns.¹¹⁰ In a stark reversal, the proposed rule makes it easier to transfer these machineguns and in turn encourages misuse of the dealer sales sample process.

On November 10, 1999, ATF published a letter explaining the agency’s law letter requirement.¹¹¹ ATF states the letter was shared in response to misinformation spreading through the firearm industry that a law letter was not required.¹¹² ATF explained that an application to transfer a post-1986 machinegun must be submitted to a federal firearms licensee and special occupational taxpayer, and the application must be submitted with a law letter, “evidencing a

¹⁰⁶ 18 U.S.C. § 922(o)(1).

¹⁰⁷ 18 U.S.C. § 922(o)(2).

¹⁰⁸ As the two other provisions of the proposed rule, the notice of proposed rulemaking would benefit from additional information on why these changes are necessary and how often they occur.

¹⁰⁹ 27 CFR § 479.105(d).

¹¹⁰ See ATF, *NFA “Law Letter” Requirement* (Nov. 10, 1999), <https://www.atf.gov/media/25406/download> [<https://perma.cc/PH43-AE7H>] (last visited July 6, 2026); ATF, *Open Letter to All Federal Firearm Licensees Regarding Machinegun Dealer Sales Sample Letters* (Jan. 11, 2023), <https://www.atf.gov/media/14331/download> [<https://perma.cc/4Y48-A2SB>] (last visited Jun. 17, 2026).

¹¹¹ ATF, *NFA “Law Letter” Requirement* (Nov. 10, 1999), <https://www.atf.gov/media/25406/download> [<https://perma.cc/PH43-AE7H>] (last visited July 6, 2026).

¹¹² *Id.*

government agency’s interest in a particular machinegun.”¹¹³ Specifically, the letter explained that the NFA Branch of ATF would look for the following information in law letters: “written on agency letterhead and signed by the agency head or by someone with delegated authority to sign for the agency head, dated within one year of the date of the receipt of the application, identification of the particular machinegun being transferred (for example, M16A2), identification of the agency’s interest in the machinegun (for example, purchase, or demonstration), and the documentation of the need for more than one machinegun of a particular model.”¹¹⁴

In 2023, ATF issued an open letter to all FFLs, which reiterated the requirements for law letters.¹¹⁵ By reiterating the requirements, ATF sought to facilitate the transfer or importation of the machinegun and reduce possible delay in processing applications.¹¹⁶ In the notice of proposed rulemaking, ATF now explains that the open letter was in response to “receiving legally insufficient law letters” that delayed the transfer and importing process. As before, ATF reiterated that a “law letter from a government entity must express [their] need for, or interest in seeing a demonstration of, a particular machinegun.”¹¹⁷ “Applications to transfer or import more than one post-1986 machinegun of a particular model must also include justification that explains why the government entity needs the requested quantity of machineguns.”¹¹⁸

In contrast with the 1999 letter, the 2023 letter came with a specific warning for FFLs: “[a] licensee may not use a law letter as a method to enhance a personal collection or inventory of machineguns with assistance from a government entity.”¹¹⁹ The letter also reminded FFLs that “[i]t is unlawful to use a fraudulent law letter to circumvent” the general prohibition on machineguns outlined in section 922(o) and such actions are punishable by fine, imprisonment for up to ten years, or both.¹²⁰ ATF explained that “[it] needs to be satisfied that the accompanying law letter is a bona fide expression of the government entity’s interest in purchasing the machinegun requested.”¹²¹ Moreover, starting with the 2023 letter, ATF started to “verify the validity of every law letter submission with each government entity point of contact.”¹²²

The proposed rule significantly departs from ATF’s decades-long treatment of dealer sales samples and law letter requirements. Under the proposed rule, when a government entity requests a dealer sample, the government will no longer need to explain its need for the

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ ATF, *Open Letter to All Federal Firearm Licensees Regarding Machinegun Dealer Sales Sample Letters* (Jan. 11, 2023), <https://www.atf.gov/media/14331/download> [<https://perma.cc/4Y48-A2SB>] (last visited July 6, 2026).

¹¹⁶ *Id.* at 1.

¹¹⁷ *Id.* at 2.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

machinegun and the specific quantity requested. The proposed rule would also strike the “particularly suitable” language, which has required dealers to make and register machineguns only if it is established by specific information that the machinegun is “particularly suitable for use by federal, state, or local entities.”¹²³ This language is a reasonable safeguard, particularly when federal, state, and local entities are the only entities permitted to own such machineguns.

Significantly lowering the requirements for law letters and dealer sales samples is dangerous and contrary to the purpose of the NFA. Simply put, lowering the requirement for law letters encourages misuse of dealer sales samples, a known issue, that was not properly raised in the notice of proposed rulemaking.

B. The Proposed Rule Is Arbitrary and Capricious and Contrary to the NFA

For reasons described in Section IV.A., the proposed rule is arbitrary and capricious. It is also arbitrary and capricious because it is neither rational nor factually supported.

The proposed rule is completely devoid of discussion to the extent to which the dealer sales sample process has been misused.¹²⁴ The proposed rule only briefly states that “it is true that the dealer sales sample transfer procedure . . . can be misused by unscrupulous dealers or law enforcement.”¹²⁵ It does not provide meaningful data explaining how ATF’s previous policy and current proposed changes have affected and will affect the number of dealer sale samples misuse.

The States are particularly concerned that this proposed rule, when paired with the new proposed rule lowering the standard of proof for unlawful licensees to a “willful” standard,¹²⁶ will exacerbate attempts to illegally acquire post-1986 machineguns.

ATF offers no reasoned explanation for why safeguards are unnecessary in a regime designed to prevent post-1986 machineguns from entering ordinary commercial circulation. That omission is especially serious because this proposed rule is not made in isolation. In a separate rulemaking, ATF proposes to define “willfully” in a way that it concedes will raise the threshold for license revocation, suspension, and civil fines.¹²⁷ ATF acknowledges there that, under the proposed standard, incidents of neglect, uncorrected employee error, or avoidable violations may

¹²³ 27 CFR § 479.105(e).

¹²⁴ Press from ATF’s website explains the extent to which a single dealer can exploit the sales sample process. From July 2018 and August 2022, the Police Chief for Adair, Iowa wrote nearly 40 different law letters, requesting the purchase and demonstration of 90 machine guns for his two-man police department. Bureau of Alcohol, Tobacco, Firearms and Explosives, “Adair Police Chief Convicted for Fraud, False Statements and Firearms Charges” (Feb. 15, 2024), <https://www.atf.gov/news/press-releases/adair-police-chief-convicted-fraud-false-statements-and-firearms-charges> (last accessed on June 17, 2026); *see also* United States Attorney’s Office District of Maryland, “North Carolina and North Dakota Police Chiefs and Federal Firearms Licensees Indicted for Conspiracy to Illegally Acquire Machineguns and Other Firearms” (Oct. 20, 2023), <https://www.justice.gov/usao-md/pr/north-carolina-and-north-dakota-police-chiefs-and-federal-firearms-licensees-indicted> (last accessed on June 17, 2026).

¹²⁵ 91 Fed. Reg. 24486.

¹²⁶ 91 Fed. Reg. 25202.

¹²⁷ 91 Fed. Reg. 25201.

go uncorrected without meaningful enforcement consequences, increasing public-safety risks. That matters here because the dealer-sales-sample exception depends on the honesty, diligence, and continued compliance of qualified FFLs and SOTs. If ATF simultaneously weakens the front-end showing needed to acquire post-1986 machineguns and narrows the back-end enforcement tools available when licensees violate federal law, the combined effect is to increase the risk that machineguns will be acquired, retained, transferred, or used outside the narrow government-authority exception Congress preserved.

ATF's failure to analyze that combined effect is arbitrary and capricious. An agency may not evaluate each deregulatory proposal in a vacuum while ignoring how simultaneously proposed rules interact in practice. The relevant question is not merely whether a shorter law letter reduces paperwork burden. It is whether, in the real regulatory environment ATF is creating, the proposed weakening of law-letter requirements will increase unlawful or pretextual access to post-1986 machineguns, particularly when paired with a separate proposed rule that reduces the practical likelihood of regulatory enforcement against non-compliant licensees. ATF did not answer that question, did not seek meaningful data from States and local law-enforcement agencies about misuse of law letters, and did not explain why reduced documentation is appropriate when the agency itself acknowledges that this pathway can be abused. The proposed rule should be withdrawn or, at minimum, ATF should retain the existing safeguards and conduct a reasoned analysis of the cumulative public-safety impacts of this proposed rule and the willfulness proposal together.

Fundamentally, the proposed rule lacks justification for changing the dealer sales sample process. The closest justification in the notice of proposed rulemaking is that ATF "determined the plain text of the statute does not require an in-depth analysis of the government entity's intent or reason for requesting the demonstration."¹²⁸ But lowering the requirements for the transfer of machineguns runs contrary to the underlying purposes of the NFA and ATF's stated mission.¹²⁹ It also runs counter to the decades-long history of strict regulation outlined above. The proposed rule has no examples of government entities or SOT businesses finding the law letter and demonstration requirements to be too burdensome. Indeed, since the 2023 letter, ATF has even made it simpler for the government and SOT businesses to request a demonstration with the creation of a new form.¹³⁰

The proposed rule also fails to fully consider and explain how law letters are currently one of the only mechanisms against dealer misuse. The law letter and its related requirements are a necessary safeguard for a process that has been historically exploited by dealers and law enforcement. Accordingly, the States urge ATF to withdraw the proposed rule. The notice of proposed rulemaking does not list any regulatory alternatives that were considered by ATF. The agency should have considered the alternative of no change and sustaining the status quo.

¹²⁸ 91 Fed. Reg. 24486.

¹²⁹ ATF, "Our Mission," <https://www.atf.gov/about>.

¹³⁰ ATF, "Request for Restricted 922(o) Machine Gun (National Firearms Act)—ATF Form 5320.24," <https://www.atf.gov/rules-and-regulations/form-and-information-collection-notices/request-restricted-922o-machine-gun-national-firearms-act-atf-form-5320-24>.

**V. CLARIFYING SPECIAL OCCUPATIONAL TAX PAYMENTS PER BUSINESS ACTIVITY
(RIN 1140-AA76), 91 FED. REG. 24478 (MAY 6, 2026)**

ATF has also proposed a change to the regulations that govern special (occupational) tax (SOT) payments for business activities related to NFA firearms. The proposal would make it cheaper to import, manufacture, and deal in NFA firearms, lowering the barriers to making and selling NFA firearms. However, ATF did not acknowledge, much less seriously consider, the potential costs of making NFA firearms more widely available. Nor did ATF consider how this change would interact with the other deregulatory actions discussed in this comment that the agency proposes to take with respect to NFA firearms. The proposal here is also inconsistent with the primary rationale that the agency offered in justifying it, and ATF failed to consider an obvious alternative that would be more consistent with its stated goals. The States urge ATF to withdraw the rule, or at minimum to consider implementing the alternative identified below.

A. The Special (Occupational) Tax NPRM

Under the NFA, 26 U.S.C. § 5801(a), every importer, manufacturer, and dealer in firearms must pay the SOT “for each place of business” on an annual basis. Importers and manufacturers pay \$1000 per year, and dealers pay \$500 per year. This tax furthers the NFA’s purpose of limiting the availability of NFA firearms, because, as explained above, NFA firearms are uniquely dangerous. As ATF’s own website describes, the “underlying purpose” of the NFA, including its tax provisions, “was to curtail, if not prohibit, transactions in NFA firearms ... because of their use in crime.”¹³¹

Under current regulatory practice, the number of SOT payments owed by an FFL engaged in these three business activities—importing, manufacturing and dealing in NFA firearms—is tied to the number of licenses they have under the GCA. For each of those business activities, there are several licenses that a business might need in order to engage in a particular subset of that business activity. For instance, there are two types of manufacturer licenses: one for firearms, and one for destructive devices. Similarly, there are three kinds of dealer licenses and two kinds of importer licenses.¹³² If an FFL’s business requires multiple licenses at a single location, the licensee generally must pay the SOT for each license that it holds.¹³³ However, there is an exception to this general rule: if the licensee is a manufacturer or importer that also engages in the business of dealing, they need not pay the SOT for dealing.¹³⁴ That exception derives from GCA licensing rules: if an FFL has a license for manufacturing or importing a particular category of firearm, that license permits it to engage in dealing in that category of firearm as well.

¹³¹ ATF, National Firearms Act, <https://www.atf.gov/rules-and-regulations/laws-alcohol-tobacco-firearms-and-explosives/national-firearms-act> [<https://perma.cc/C26F-UBV3>].

¹³² 91 Fed. Reg. 24479 n.6.

¹³³ 27 C.F.R. § 479.39; *see* ATF, Special Occupational Tax Requirements—Business Locations, FFL Newsletter at 10–11 (June 2021), <https://www.atf.gov/media/19536/download> (ATF guidance explaining the relationship between licenses and SOT payments owed).

¹³⁴ *Id.*

ATF's proposed change would require SOT payments based on the number of business activities—importing, manufacturing, or dealing—that an FFL conducts at a particular location, rather than on the number of GCA licenses that an FFL holds. For example, a business with two manufacturing licenses would pay the manufacturing SOT twice in the status quo, but only once under the proposed rule. However, ATF also proposes preserving the exception for manufacturers and importers that also engage in the business of dealing; those businesses would not need to pay the SOT for dealing. In practice, this change would reduce the number of SOT payments owed by FFLs that require multiple licenses for a single type of business activity, e.g., by an FFL that has two different manufacturer licenses.¹³⁵ ATF expects the change to result in a loss of \$280,240 SOT payments per year.¹³⁶

ATF's justification for this change is that it aligns more closely with the text of the NFA and 27 C.F.R. § 479.39, and reduces confusion associated with the current regulation.¹³⁷

B. The Special (Occupational) Tax Proposal is Arbitrary and Capricious

This proposal is arbitrary and capricious for several reasons. Foremost, ATF has not considered an obvious cost of this proposal, which would make NFA firearms more widely available. ATF claims that there are no quantifiable costs to the proposed rule.¹³⁸ However, the proposed rule would make it less expensive to engage in the business of dealing, importing, or manufacturing NFA firearms by reducing the tax associated with those activities. By doing so, the proposed rule has a predictable consequence: there will be more dealing, importing, and manufacturing of NFA firearms. That increased activity will adversely impact public safety by introducing more firearms into circulation. That concern is especially acute here, because, as explained, for nearly one hundred years Congress has regulated NFA firearms more strictly than other firearms on the understanding they are uniquely dangerous weapons. ATF did not acknowledge or attempt to study this potential cost of the regulatory change, much less explain why that cost would be outweighed by the purported benefits of the rule, which ATF estimates at just \$3,106 per year in saved administrated expense across all FFLs.¹³⁹

ATF also failed to account for the cumulative nature of its several proposals that would deregulate activity related to NFA firearms, and what effect those changes would have when implemented together.

Additionally, the proposed rule is inconsistent with its stated rationale. ATF justifies the rule because, in the agency's view, it is more consistent with the statute and current regulation to

¹³⁵ ATF claims that “[p]eople have been confused about whether they must pay a SOT for each such GCA license” under these circumstances but does not identify the source of that confusion—whether ATF regulation, guidance, or anything else. 91 Fed. Reg. 24479. Nor has ATF recognized that such confusion could be easily remedied by the agency issuing clear guidance. *Id.*

¹³⁶ 91 Fed. Reg. at 24481.

¹³⁷ 91 Fed. Reg. at 24480.

¹³⁸ 91 Fed. Reg. at 24482.

¹³⁹ 91 Fed. Reg. at 24482; *see State Farm*, 463 U.S. at 43 (it is arbitrary and capricious to “entirely fail[] to consider an important aspect of the problem”).

impose SOTs based on the categories of business activity identified in 26 U.S.C. § 5801(a) than on GCA licenses. Specifically, ATF explained in the preamble that “the relevant inquiry” for determining the number of SOTs that an FFL must pay “is not the number of licenses used to conduct the NFA business activity,” and that the NFA “does [not] align with the licensing scheme under the GCA.”¹⁴⁰ However, the proposed rule maintains the exception that FFLs that engage in importing or manufacturing and also in dealing need only pay the SOT for importing or manufacturing but not for dealing. In “Example 2” of the new proposed regulatory text, ATF explains that a manufacturer that also deals would pay only one SOT, for manufacturing.¹⁴¹ But as justification for this exception, ATF cites the GCA licensing scheme: the purported reason the manufacturer in this example would not need to pay a separate SOT for dealing is that its manufacturing license would allow it to deal as well. Preserving this exception is plainly inconsistent with ATF’s position that the relevant inquiry for determining the number of SOTs owed is not the number of licenses but rather the number of business activities—importing, manufacturing, or dealing—in which the FFL engages.

There is an obvious alternative which ATF failed to consider that would eliminate this inconsistency: requiring SOT payments based on business activity without regard to the number of licenses the FFL holds, full stop, without the manufacturer-dealer or importer-dealer exceptions. That alternative would better accomplish ATF’s stated goals. It is arbitrary and capricious for ATF not to consider that alternative.¹⁴²

Finally, the relationship of the proposed rule to prior ATF guidance is confusing and inadequately explained. ATF states that this “proposed clarification to § 479.39 does not supersede the analysis” in prior ATF guidance or regulations.¹⁴³ However, this policy would clearly be a shift from current ATF practice, given that ATF also says that “[u]nder the existing regulations, licensees have been paying for more SOTs than required,” and the proposal would result in fewer SOT payments.¹⁴⁴ Should ATF proceed with this rule, it should explain more clearly its change in position here, and from where its current practice derives.¹⁴⁵

The States urge ATF to withdraw the proposed rule, or at minimum to adopt the proposed change while also eliminating the exception for manufacturers and importers that also engage in the business of dealing NFA firearms.

¹⁴⁰ 91 Fed. Reg. at 24480.

¹⁴¹ 91 Fed. Reg. at 24484.

¹⁴² See *Dist. Hosp. Partners v. Burwell*, 786 F.3d 46, 59 (D.C. Cir. 2015) (it is arbitrary and capricious to rely on “internally inconsistent” analysis and to fail to consider “significant and viable obvious alternatives”).

¹⁴³ 91 Fed. Reg. at 24480.

¹⁴⁴ 91 Fed. Reg. at 24481.

¹⁴⁵ See *FDA v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 568 (2025) (agencies must display “awareness that they are changing position”).

VI. PROCEDURAL DEFECTS COMPOUND THE SUBSTANTIVE FAILURES OF EACH OF THE FIVE NFA-RELATED PROPOSED RULES

All five proposed rules suffer 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 States despite obvious federalism implications and relied on undisclosed industry input. These are not technical defects. They go to the integrity of the rulemaking process and cannot be cured through post hoc explanations in a final rule.

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

ATF's federalism conclusions in all five proposed rules cannot be squared with the impact that each proposed rule would have on State and local law enforcement agencies, as addressed above.¹⁴⁶

Executive Order 13132 defines "policies that have federalism implications" to include regulations and policy actions that have "direct effects on the States," on the relationship between the federal government and the States, or on the distribution of power and responsibilities among levels of government.¹⁴⁷ And Section 6(a) 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.¹⁴⁸ For the reasons previously explained, all five proposed rules could directly affect State criminal investigations and State public-safety systems.

ATF's federalism certifications are inadequate. The question is not whether the proposed rule formally commands States to spend money or expressly preempts state law. Executive Order 13132's federalism 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 Office of Management and Budget's (OMB) implementing guidance require more than a conclusory certification. 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."¹⁴⁹ For rules that trigger the specific Section 6(b) or Section 6(c) procedures, the agency must also provide a federalism

¹⁴⁶ See 91 Fed. Reg. 25229; 91 Fed. Reg. 24471; 91 Fed. Reg. 24466; 91 Fed. Regs. 24485; 91 Fed. Reg. 24478.

¹⁴⁷ Exec. Order No. 13,132, § 1(a), 64 Fed. Reg. 43,255, 43,255 (Aug. 10, 1999).

¹⁴⁸ *Id.* § 6(a), 64 Fed. Reg. at 43,257.

¹⁴⁹ OMB Memorandum M-00-02, *Guidance for Implementing E.O. 13132, "Federalism"*, at 4–6 (Oct. 28, 1999).

summary impact statement describing prior consultation, state and local concerns, and the extent to which those concerns were met.¹⁵⁰

ATF ignored that federalism process. The proposed rules do 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 these NFA-related proposals. Instead, the proposed rules appear to proceed from the premise that no federalism consultation was required. That conclusion required a reasoned explanation, particularly given the proposals' obvious effects on State enforcement systems 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 the States and public to evaluate whether ATF obtained the "meaningful and timely input" required by Executive Order 13132. The proposed rules therefore deprived the States of both the consultation process to which they were entitled and the notice necessary to respond meaningfully to ATF's federalism concerns.

The omission is especially serious because the public record suggests that ATF consulted closely with regulated industry stakeholders while excluding the State and local law enforcement partners who bear the public safety consequences of unlawful NFA possession, interstate transport, machinegun diversion, and reduced visibility into transfers affecting their jurisdictions.¹⁵¹ DOJ and ATF publicly described the rulemaking package as reflecting "industry and expert feedback and concerns," and industry representatives publicly described months of engagement with ATF and DOJ. If regulated entities had a meaningful opportunity to shape proposed rules that would reduce their regulatory obligations, then States regulatory obligations, then States whose criminal-enforcement, licensing, and public-safety responsibilities would be affected by the same proposals should have received meaningful and timely consultation as well. Executive Order 13132 does not permit ATF to treat industry burden as concrete while treating State public-safety reliance as invisible.

On this record, ATF's Executive Order 13132 determination is not supportable. ATF should withdraw the proposed rules and, at minimum, conduct genuine federalism consultation with affected state and local officials, including the undersigned, before reproposing any of these five rules.

B. ATF Has Not Disclosed the Substance of Outside Influence That Appears to Have Shaped at Least Some, If Not All, of the Proposed Rules

ATF's administrative record contains a direct and material tension concerning the development of its proposed rules. 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."¹⁵² Yet ATF's own public communications, and the contemporaneous statements of industry organizations, describe a materially different process.

¹⁵⁰ Exec. Order No. 13,132, § 6(b)–(c).

¹⁵¹ See *infra* § VI.B.

¹⁵² ATF, *ATF Launches New Era of Reform: Questions and Answers* (2026), www.atf.gov/rules-and-

At the public announcement of the rulemaking package, the Department of Justice (DOJ) and ATF said the review leading to these proposed rules “included consideration of industry and expert feedback and concerns,”¹⁵³ 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.”¹⁵⁴ That message was reinforced at the announcement itself: standing before representatives of 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.”¹⁵⁵ Those statements are not consistent with an administrative record that denies that industry directly or indirectly shaped the rules.

Industry representatives likewise confirm 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.”¹⁵⁶ 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.”¹⁵⁷ 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 ATF’s proposed rules “continued this momentum” by addressing matters requiring formal rulemaking.¹⁵⁸ And Gun Owners of America claimed credit for the package, stating that it had “fought the Department of Justice for rule changes by ATF,” that it

[regulations/atf-launches-new-era-reform/questions-and-answers](#).

¹⁵³ DOJ Press Release, *DOJ and ATF Announce Regulatory Reforms to Reduce Burdens on Law-Abiding Gun Owners and Businesses* (Apr. 29, 2026), www.justice.gov/opa/pr/doj-and-atf-announce-regulatory-reforms-reduce-burdens-law-abiding-gun-owners-and-businesses.

¹⁵⁴ ATF, *ATF’s New Era of Reform* (May 12, 2026), <https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform>.

¹⁵⁵ Statement of Robert Cekada, ATF “New Era of Reform” Rulemaking Announcement (Apr. 29, 2026), <https://www.justice.gov/opa/video/acting-ag-blanche-and-acting-atf-director-cekada-announce-changes-atf-regulations>.

¹⁵⁶ NSSF, *NSSF Welcomes ATF Landmark Rulemaking Package* (Apr. 29, 2026), <https://www.nssf.org/articles/nssf-welcomes-atf-landmark-rulemaking-package/>; see also The Weekly Reload Podcast, “How ATF’s New Regulations Change the Gun Industry (Ft. NSSF’s Larry Keane),” published May 10, 2026, <https://thereload.com/podcast-how-atfs-new-regulations-change-the-gun-industry-ft-nssfs-larry-keane/> (Larry Keane, NSSF’s Senior Vice President and General Counsel, claimed that ATF reached out to NSSF “as they were working on the drafts to get perspective from the industry.”).

¹⁵⁷ Am. Suppressor Ass’n, *ASA Statement on Nomination of Robert Cekada for ATF Director* (Nov. 17, 2025), <https://americansuppressorassociation.com/news/asa-statement-on-nomination-of-robert-cekada-for-atf-director>.

¹⁵⁸ Nat’l Rifle Ass’n, *ATF Announces New Director, Historic Regulatory Overhaul* (Apr. 30, 2026), <https://www.nraila.org/articles/20260430/atf-announces-new-director-historic-regulatory-overhaul>.

“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.”¹⁵⁹

While informal rulemaking does not prohibit *ex parte* contacts, significant communications presenting new data or substantial argument must be reflected in the public record so affected parties may respond and reviewing courts may assess the basis for the agency’s decision.¹⁶⁰ 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.¹⁶¹

If ATF relied on industry-supplied information—including, but not limited to, burden estimates, factual assertions, legal memoranda, enforcement anecdotes, draft language, or policy recommendations—those materials formed part of the practical basis for the proposal and should have been placed in the docket for the public to be able to meaningfully respond.

The concern is heightened because the constituency apparently involved here is not a neutral technical advisor but the very regulated industry that stands to directly benefit 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,”¹⁶² and National Shooting Sports Foundation described the package as addressing regulations that “increased compliance costs for the industry.”¹⁶³ 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.

¹⁵⁹ Gun Owners of Am., *Here’s What GOA Did for Your Gun Rights This Week* (May 2, 2026), available at <https://www.gunowners.org/na040226/>.

¹⁶⁰ 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).

¹⁶¹ See, e.g., *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 393-94 (D.C. Cir. 1973) (holding “it is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, [in] critical degree, is known only to the agency.”); *United States v. Nova Scotia Food Prods. Corp.*, 568 F.2d 240, 251-52 (2d Cir. 1977) (holding that the “most critical factual material” relied upon by an agency must be disclosed so interested parties may “test, examine, and criticize” the agency’s rationale); *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236-40 (D.C. Cir. 2008) (vacating a rule where the agency withheld portions of studies underlying its proposal, emphasizing that “an agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.”).

¹⁶² DOJ Office of Public Affairs, *DOJ and ATF Announce Regulatory Reforms to Reduce Burdens on Law-Abiding Gun Owners and Businesses* (Apr. 29, 2026), <https://www.justice.gov/opa/pr/doj-and-atf-announce-regulatory-reforms-reduce-burdens-law-abiding-gun-owners-and-businesses>.

¹⁶³ NSSF Press Release, *NSSF Welcomes ATF Landmark Rulemaking Package* (Apr. 29, 2026), <https://www.nssf.org/articles/nssf-welcomes-atf-landmark-rulemaking-package/>.

Nor can ATF cure the defect by making disclosures in the final rule. Commenters cannot meaningfully respond to arguments, assumptions, data, or proposed language that were never disclosed during the comment period. Once the comment period closes, the opportunity to test those materials has already been lost.¹⁶⁴

ATF should therefore place into the docket all materials—from both before and after release of the proposed rules—concerning communications with industry representatives, trade associations, advocacy organizations, Members of Congress or their staff, and other stakeholders concerning the interstate transport of NFA firearms through Form 20, CLEO notification for NFA applications, NFA marking requirements, machinegun dealer sales samples and “law letter” requirements, special occupational tax payments, claimed burdens, State and local enforcement impacts, and public safety risks associated with diversion or misuse of NFA firearms. That disclosure should include meeting dates, attendees, summaries, draft text, burden estimates, factual assertions, communications, and legal memoranda. ATF should then reopen the comment period for at least 90 days. Without disclosure and reopening, any final rule will rest on a procedurally defective record.

C. ATF Has Not Complied With the Regulatory Flexibility Act

ATF presents these rules as relieving burdens on federal firearms licensees and special occupational taxpayers, most of which are small businesses, yet the proposals supply no reasoned analysis of those effects. To the extent ATF certified that a proposed rule lacks a significant economic impact, the certification is unsupported; and to the extent ATF instead treats small-entity burden reduction as a benefit, it may not count that benefit while ignoring the corresponding public-safety and enforcement costs borne by the States and the public.

D. ATF Has Not Complied With the Paperwork Reduction Act of 1995

Each of these rules alters a collection ATF presently maintains under an OMB control number—the Form 20 transport application (RIN 1140-AA89), the chief-law-enforcement-officer copy of the Form 1 and Form 4 (RIN 1140-AA65), and the maker-marking identification regime (RIN 1140-AA70). ATF may not eliminate or curtail those collections without the analysis the Paperwork Reduction Act requires, including an assessment of the practical utility of the information to government—the very law-enforcement utility ATF elsewhere discounts.

E. ATF Has Not Complied With Executive Order 12866

Executive Order 12866 requires an agency to assess both the costs and the benefits of a regulatory action and to proceed only on a reasoned determination that the benefits justify the costs. ATF’s analysis is one-sided. Across all five proposed rules, ATF quantifies the burden reductions it expects industry to enjoy while treating the public-safety, investigative, and enforcement costs as though they were zero. As explained above with respect to the special-occupational-tax proposal, an agency acts arbitrarily when it credits speculative or modest private savings while declining even to estimate the concrete harms it concedes—lost traces, untracked transports, diverted machineguns, and weakened state enforcement. That defect is not

¹⁶⁴ See 5 U.S.C. § 553(c).

confined to one rule; it runs through the package, and it is compounded by ATF's refusal to analyze the rules' cumulative effect.

VII. CONCLUSION

The States have direct sovereign and quasi-sovereign interests in these rules and are owed special solicitude.¹⁶⁵ Several of the changes would cause harm that may not necessarily be undone after judicial review: interstate transports would occur untracked and the record of those movements would never be created; NFA applications would be granted without input from local law enforcement; unmarked NFA firearms would enter circulation and remain unidentifiable in the field;; and machineguns acquired through the weakened dealer-sales-sample process could not be recalled once distributed. Later vacatur or remand could halt future harm but may not necessarily restore the traceability, records, or weapons already lost. The undersigned States accordingly preserve all objections and all available remedies, including vacatur and remand, postponement of any effective date under 5 U.S.C. § 705, and injunctive relief.

For the reasons stated in this letter, the undersigned States respectfully request that ATF withdraw these proposed rules or consider alternatives as required by the APA.

Sincerely,



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¹⁶⁵ See *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007).



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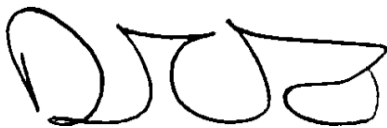
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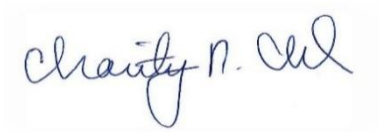
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A handwritten signature in blue ink that reads "Charity R. Clark". The signature is written in a cursive style with a large initial "C".

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A handwritten signature in black ink that reads "Jay Jones". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

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A handwritten signature in black ink that reads "Nicholas W. Brown". The signature is written in a cursive style with a large initial "N" and a long horizontal stroke extending to the right.

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