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September 4, 2026

Via Federal Rulemaking Portal (Regulations.gov)

The Honorable Todd Blanche
Attorney General of the United States

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

c/o: ATF Rulemaking Comments
Mail Stop 6N-518, Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

ATTN: RIN 1140-AA80

Re: Comments to Notice of Proposed Rulemaking, *"Registering NFA Firearms That Fall Out of Government Contract,"* 91 Fed. Reg. 40944 (July 6, 2026); Docket No. ATF–2026–0298; ATF 2025R–22P

Dear Attorney General Blanche and Director Cekada:

We, the Attorneys General of Illinois, Massachusetts, Arizona, California, Colorado, Connecticut, Delaware, Hawai'i, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, Rhode Island, Vermont, and Washington (the "States") write in opposition to the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") proposed rule entitled "Registering NFA Firearms That Fall Out of Government Contract," published in the Federal Register at 91 Fed. Reg. 40944 on July 6, 2026 ("Proposed Rule" or "NPRM"). The Proposed Rule is one of about three dozen through which ATF seeks to fundamentally overhaul the firearm regulatory scheme. The States have submitted 15 other comments addressing these proposals to date.

This NPRM would amend 27 C.F.R. §§ 479.33 and 479.103 to ease the process for those who manufacture particularly dangerous weapons—machine guns, explosive devices, and others that are regulated by the National Firearms Act of 1934 ("NFA")—pursuant to a contract with the United States Government ("USG"), to register and resell NFA-regulated weapons to third parties. This is not a mere paperwork change nor a helpful efficiency. As this rule change regards a category of weapons manufactured for military use, this proposal would remove an important guardrail—ATF's careful review and approval of individual variance requests—and replace it with automatic self-registration that ATF never reviews, a change that has a clear public safety consequence. ATF's own economic analysis projects this change would garner an annual additional $611.3 million in profits for manufacturers of destructive devices alone, which is just one type of weapon regulated under the NFA.[1] That's not a trickle of new military-grade weapons, it is a flood.

The States have substantial public safety and law enforcement interests that are harmed by this proposal, including keeping prohibited weapons off the black market and successfully prosecuting criminals who break the law. By removing safeguards, the Proposed Rule would make it more difficult for the States to prevent unlawful possession, trace crime guns, investigate trafficking and violent crime, and prosecute offenders. The States—and their residents—would bear the resulting investigative costs and public safety harms. These are serious reliance interests that ATF should not have disregarded.

The Proposed Rule also violates the Administrative Procedure Act ("APA"). It is contrary to law—specifically the NFA. It is also arbitrary and capricious because the rule identifies no problem in the current system, ignores the public safety consequences, and neither explains its reversal of longstanding policy nor considers the States' reliance interests, among other things. And it is procedurally defective because ATF has failed to consider the impact of the entire regulatory package together, ATF has not consulted with the States, and ATF has not disclosed the substance of outside influence that appears to have shaped the Proposed Rule.

We urge the Bureau to withdraw the Proposed Rule and retain the current regulations at 27 C.F.R. §§ 479.33 and 479.103.

I. The National Firearms Act and the Proposed Rule Change

This Proposed Rule regards the particularly dangerous weapons that Congress restricts most stringently through the NFA. Congress enacted the NFA in response to Prohibition-era violence carried out with machine guns and sawed-off shotguns, imposing federal registration and transfer controls on the weapons most associated with organized crime.[2] The Supreme Court has long recognized the NFA for what it is: "a regulatory measure in the interest of the public safety" governing weapons—machine guns, sawed-off shotguns, silencers, hand grenades and other destructive devices—whose possession is no innocent act.[3] And a half-century later, Congress went further still, freezing the civilian stock of machine guns where it stood in 1986.[4]

The NFA's registration system is the load-bearing wall of that ninety-year design: the manufacturer of every such weapon must "register each firearm he manufactures,"[5] in "a

[1] *Registering NFA Firearms That Fall Out of Government Contract*, 91 Fed. Reg. 40944 (proposed July 6, 2026) (to be codified at 27 C.F.R. pt. 479) at 40950 ("Manufacturers of destructive devices would thus collectively accrue an estimated annual profit from selling these destructive devices of $611.3 million annually.").

[2] National Firearms Act of 1934, ch. 757, 48 Stat. 1236 (1934) (current version codified as 26 U.S.C. §§ 5801 et seq.).

[3] *United States v. Freed*, 401 U.S. 601, 609 (1971) ("This is a regulatory measure in the interest of the public safety, which may well be premised on the theory that one would hardly be surprised to learn that possession of hand grenades is not an innocent act.").

[4] 18 U.S.C. § 922(o), enacted by the Firearms Owners' Protection Act of 1986, Pub. L. No. 99-308, § 102(9), 100 Stat. 449, 452–53 (1986).

[5] 26 U.S.C. § 5841(b).

central registry of all firearms in the United States which are not in the possession or under the control of the United States."[6] Under ATF's longstanding regulation, registration occurs no later than the close of the next business day after manufacture, tying the registry to the fact of the weapon's existence.[7]

In practice, federal contractors that manufacture NFA weapons for the U.S. military are sometimes left with extra weapons that, in ATF's terminology, "fall out of contract." These NFA weapons might have been left over from testing, rejected by the USG for quality or other reasons, or stranded by failed contracts. They are neither exempt from registration requirements nor are they able to be automatically registered for sale under current law.

Because they fall out of contract well after the registration window, the manufacturers have two choices. The weapons either must be destroyed or exported,[8] or the manufacturer can request a variance from ATF to register those weapons outside the statutory period. Historically, ATF has explained that "[v]ariance requests are not granted for any reason an FFL desires and cannot be obtained simply to circumvent regulatory requirements. Indeed, it is necessary that the result of the proposed variance be largely equivalent to the codified regulatory requirement."[9] Approval from the Director is contingent upon certain conditions, including "(1) good cause, (2) consistent with the intended effect and is substantially equivalent to that specifically prescribed method or procedure; and (3) will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part."

The Proposed Rule would instead automatically allow any USG contractor who has manufactured these weapons or devices to register them "no later than 15 days after the date they are notified that the firearms have fallen out of contract."[10] That would allow them to remain in existence, avoiding destruction that is the default rule, and then flow in commerce in various ways.

II. The Proposed Rule Would Harm Public Safety and the States.

The Proposed Rule would upend a system that works and replace it with danger. The public safety harms here are apparent. The rule would remove the existing incentive for manufacturers to not overproduce NFA-regulated weapons and allow them to sit unregistered. While they sit unregistered, they have a heightened risk for diversion because those firearms are invisible to crime-gun tracing and other law enforcement tools.

A. ATF's Own Data Show the Current System Promotes Public Safety.

ATF's own National Firearms Commerce and Trafficking Assessment ("NFCTA") confirms what the NPRM's bare public safety analysis hints at but never addresses: lawfully registered NFA weapons are currently so rare among crime guns that machine guns, silencers,

[6] 26 U.S.C. § 5841(a).

[7] 27 C.F.R. § 479.103; NPRM, 91 Fed. Reg. at 40945.

[8] NPRM, 91 Fed. Reg. at 40946 ("Without a mechanism to register the firearms once they are no longer covered by the USG contract, the firearms must be destroyed or exported.").

[9] *FFL Newsletter: Federal Firearms Licensee Information Service,* ATF, "Variance Requests and the Approval Process," at 9 (June 2021) https://www.atf.gov/media/19536/download.

[10] NPRM, 91 Fed. Reg. at 40953–54 (proposed 27 C.F.R. § 479.103(b)(2)–(3)).

and destructive devices do not even appear as categories in the NFCTA's principal trace-type tables.[11]

The rarity of NFA weapons among NFCTA traces is no accident. It is an outcome of the current, strict system—one of contemporaneous registration, closed transfer channels, and the destruction or export of surplus military weapons. This rarity thus supports retaining that system, not relaxing it. Where NFA weapons do appear in ATF's crime data, they are overwhelmingly illegally made or imported devices that were never part of registered commerce and could never lawfully be registered[12]—a category ATF reports to be surging even as the registered side stays quiet.[13] There is clearly a black market for these types of weapons, and the current system helps control that market.

B. The Proposed Rule Would Incentivize Unsafe Practices.

The Proposed Rule would remove existing financial incentives for manufacturers to avoid production of excess NFA weapons under their USG contract. Under existing law, manufacturers have strong incentives to produce precisely what their USG contract requires because any excess will likely result in extra costs for export or destruction. Under the Proposed Rule, manufacturers no longer need to exercise such care or caution in production because any excess production can eventually be sold for profit. This reversal of incentives runs contrary to the purpose of the NFA, which—as stated by ATF—is to curtail, if not outright prohibit the circulation of NFA weapons.[14]

The stated purpose of the Proposed Rule is to spare manufacturers the cost of destruction or export of "rejected, residual, or repurposed . . . USG firearms"[15] and let them "sell such items for additional revenue instead."[16] It is self-evident that, where there is opportunity for revenue, there is also an incentive to exploit that opportunity. And while the current rule incentivizes manufacturers to minimize loss by limiting production volume of NFA firearms to the needs of their primary customers, the Proposed Rule would instead remove that incentive in a way that could lead manufacturers towards practices that place profitability over public safety.

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[11] *See* ATF, *National Firearms Commerce and Trafficking Assessment (NFTCA), Volume II - Crime Gun Intelligence and Analysis; Part III: Crime Guns Recovered and Traced within the United States and its Territories* at 16 tbl.CCG-01 (Mar. 27, 2024) https://www.atf.gov/media/15426/download (1,922,577 crime guns traced 2017–2021, with no machinegun, silencer, or destructive-device category); *see also* ATF, *NFCTA, Vol. IV - Protecting America from Trafficked Firearms: NFCTA Updates, New Analysis, and Policy Recommendations; Part III: Crime Gun Tracing Updates and New Analysis* at 2 tbl.CGT-02 (Jan. 8, 2025) https://www.atf.gov/media/18636/download (same for 2022–2023).

[12] *See* ATF, *NFCTA, Vol. III - Firearm Trafficking Investigations; Part X: National Illegal Firearm Recoveries* at 1, 4 tbl.NR-07, 5 tbl.NR-10 (April 4, 2024) https://www.atf.gov/media/14526/download.

[13] Machinegun conversion devices "are defined as machineguns under the National Firearms Act (NFA), even when not installed," ATF, *NFCTA, Vol. IV; Part V: Privately Made Firearms Updates and New Analysis* at 1 (Jan. 8, 2025) https://www.atf.gov/media/18631/download; ATF reports a 784% increase in suspected conversion devices recovered and traced between 2019 (658) and 2023 (5,816), *id.* at 7; the number of suspected privately-made firearms, including conversion devices, recovered in crimes and subsequently traced has rapidly increased nearly 1,600% from 2017 (1,629) to 2023 (27,490), *id.* at 11.

[14] ATF, *National Firearms Act Handbook*: *Ch. 1. Introduction*, at 1 https://www.atf.gov/media/25141/download (last updated May 8, 2026).

[15] NPRM, 91 Fed. Reg. at 40946.

[16] *Id*. at 40951.

Under the current rule, a manufacturer might avoid excess production or stringently produce to the contracting agency's requirements in an effort to minimize eventual losses. While informed by business motivations, this decision would be in line with the NFA's public safety purpose as it would minimize the amount of NFA weapons not required for USG military purposes. However, this current incentive structure would disappear if it were much easier to register NFA weapons that fall out of contract and also *profit* from having NFA weapons that fall out of contract.

The Proposed Rule does not protect for this eventuality and the downstream consequences. A private entity continuing to maintain NFA weapons, in potentially significant numbers, creates an inherent risk that those weapons will be stolen or otherwise diverted. Wherever weapons are stored, they are at risk of theft or loss and a target for trafficking. Between 2017 and 2021, federal firearms licensees reported 34,339 firearms stolen, including 322 silencers and 59 machine guns. Theft from licensees accounted for 17.3 percent of ATF trafficking investigations, involving 20,202 trafficked firearms. Manufacturers' share of licensee theft incidents roughly doubled between 2017 and 2023, from about 9 percent to about 19 percent, interstate-shipment theft and loss incidents rose 351 percent between 2017 and 2021, and 396 silencers were reported stolen or lost in interstate shipments in 2022 to 2023 alone. Even institutional custody can be breached: 208 machine guns, 11 destructive devices, and 9 silencers recovered in crimes between 2019 and 2023 were traced to law-enforcement-agency sources.

Thus, the rule removes an existing incentive to not over-produce and allows for an indeterminately higher number of these inherently dangerous weapons being available for theft or diversion.

C. The States Rely on Accurate Registration of a Controlled Market.

The States have significant interests that would be harmed by the Proposed Rule. As discussed, the proposed rule will allow manufacturers to produce NFA weapons in excess of contractual need and allow them to be stored without registration. And, as is well-documented, NFA weapons manufacturers are not exempt from the risk of loss or theft. Allowing manufacturers to produce and store more unregistered NFA weapons means that more unregistered NFA weapons will end up lost, stolen, then trafficked and used for crime. In doing so, the Proposed Rule would frustrate States' law enforcement efforts and harm public safety.

In addition to federal restrictions on ownership, the States strictly regulate—and in most cases prohibit—civilian possession of the weapons at issue[17] and prosecute the offenses committed with them. The States' enforcement systems are built on the premise that every NFA weapon in private hands has a federal record, and they rely on the completeness of the National Firearms Registration and Transfer Record ("NFRTR") to trace NFA weapons that surface in their communities.

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[17] *See, e.g.*, 720 ILL. COMP. STAT. 5/24-1(a); MASS. GEN. LAWS ch. 140, § 131 (machine gun licenses limited to certified firearms instructors and bona fide collectors), ch. 269, §§ 10(c) (machine guns, sawed-off shotguns, automatic parts) and 10A (silencers), ch. 266, § 102(c) (destructive and incendiary devices); CAL. PENAL CODE §§ 18710-19290 (destructive devices), 33210-33320 (short-barreled rifles and shotguns), 32610-32750 (machineguns), and 33410-33415 (silencers); CONN. GEN. STAT. § 53–202; DEL. CODE ANN. tit. 11, § 1444; HAW. REV. STAT. ANN. § 134-8; ME. REV. STAT. ANN. tit. 17-A, §§ 1051-1054; MINN. STAT. § 609.67; NEV. REV. STAT. ANN. §§ 202.275, 202.350; N.J. STAT. ANN. § 2C:39-3; R.I. GEN. LAWS §§ 11-47-8, 11-47-20; WASH. REV. CODE § 9.41.190 (Unlawful Firearms).

When a machine gun, silencer, or destructive device is recovered in a State that prohibits it, the NFRTR and ATF tracing supply the most reliable path from the weapon to a chain of custody and a suspect. The States use that tool heavily. In 2023 alone, ATF traced 3,487 crime guns, including 40 machine guns, recovered in Massachusetts and 22,973 crime guns, including 129 machine guns, recovered in Illinois.[18] Those traces often follow crime guns across state lines.[19] Where a weapon is recovered in a state different than that of origin, the median time-to-crime is 4 or more years.[20] A weapon diverted today could thus surface at a crime scene in another State years from now—long after this rulemaking concludes and any judicial review is complete. When it does, the trace will depend entirely on whether a complete and accurate registration record was made at the start.

However, an *unregistered* weapon necessarily frustrates tracing efforts and thereby impedes law enforcement and endangers the public. By allowing manufacturers to produce and store more unregistered NFA weapons, resulting in more unregistered NFA weapons that are trafficked and used for crime, the Proposed Rule would recklessly enable a registration gap at the expense of the States.

III. The Proposed Rule Violates the Administrative Procedure Act.

These proposed changes violate the APA, which prohibits agency action that is contrary to law and arbitrary and capricious.[21] Under the APA, courts are "to set aside federal agency action that is 'not in accordance with law[.]'"[22] This includes regulations "that are contrary to clear congressional intent."[23] Further, an agency action is arbitrary and capricious "if it is not reasonable and reasonably explained."[24] Agency decisions are not reasonably explained when, among other things, "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."[25] Where an agency changes a prior position, it is required to "display awareness that it *is* changing position"

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[18] *Firearms Trace Data: Massachusetts — 2023*, ATF, https://www.atf.gov/firearms/report/firearms-trace-data/firearms-trace-data-massachusetts-2023 (last updated Dec. 9, 2024); *Firearms Trace Data: Illinois — 2023,* ATF, https://www.atf.gov/firearms/report/firearms-trace-data/firearms-trace-data-illinois-2023 (last updated Dec. 9, 2024).

[19] *See NFCTA, Vol. IV; Part III* at 10 tbl.CGT-15 (of traced crime guns 2017–2023, "more than 72% (1,644,900) were recovered in the same state from which they were sourced; 28% (634,463) were recovered in a different state"); *see also NFCTA, Vol. II; Part III* at 38, fig.GP-03 (28% (413,274) of traced crime guns recovered in a different state, 2017–2021).

[20] *See NFCTA, Vol. IV; Part III* at 10 (median time-to-crime of 4.0 years for interstate recoveries versus 2.1 years for intrastate recoveries, 2022–2023); *see also NFCTA, Vol. II; Part III* at 40, fig. GP-05 (2024) ("The median TTC for intrastate recoveries (879 days or 2.4 years) was notably shorter than the TTC for interstate recoveries (1,801 days or 4.9 years)" for 2017–2021).

[21] 5 U.S.C. § 706(2)(A), (C).

[22] *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (quoting 5 U.S.C. § 706(2)(A)).

[23] *United Farm Workers v. United States Dep't of Lab.*, 509 F. Supp. 3d 1225, 1235 (E.D. Cal. 2020) (internal quotation marks omitted); *see also Fed. Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981) ("[Courts] must reject administrative constructions of the statute, whether reached by adjudication or by rule-making, that are inconsistent with the statutory mandate or that frustrate the policy that Congress sought to implement.").

[24] *Ohio v. Env't Prot. Agency*, 603 U.S. 279, 292 (2024).

[25] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

and "must show that there are good reasons for the new policy."[26] An agency must provide a "more detailed justification" for a change where "its prior policy has engendered serious reliance interests[.]"[27]

A. The Proposed Rule is Contrary to Law, or Exceeds Statutory Authority, in Violation of the APA.

The Proposed Rule is contrary to law, or in excess of statutory authority, in four ways: it exceeds the Director's statutory authority to grant relief to manufacturers, contradicts the NFA's contemporaneous-registration design, ignores the disposition restrictions of 18 U.S.C. § 922(o), and is irreconcilable with the NFA's purpose.

First, the Director has exceeded his statutory authority with this proposal. The sole statutory authority ATF invokes for these changes is the second sentence of 26 U.S.C. § 5851(a): "The Secretary may relieve any person manufacturing firearms for, or on behalf of, the United States from compliance with any provision of this chapter in the conduct of such business."[28] The NPRM does not engage in the scope (or limits) of this text. It rests instead on administrative practice: the Director's authority "has been consistently interpreted and applied as including authority to grant registration relief," and "[t]he Director has granted this relief, but it has not been included in the regulations."[29]

The States do not contest that § 5851(a) grants the Director (via the Secretary) limited authority to grant relief, and that the Director has historically granted variance to registration requirements. However, ATF does not explain its statutory authority to write rules in conflict with the rest of the Act, nor to expand variances into codified exemptions.

The NFA does not expressly grant such authority. If anything, the language of the Act suggests that the Proposed Rule exceeds the Director's statutory authority. The Director may relieve "any person" from certain requirements, suggesting individual manufacturers, not an entire class of manufacturers, may be relieved. Those persons must be "manufacturing firearms for, or on behalf of, the United States," suggesting that the manufacturer must be presently under contract, not finished with the contract. And the relief from compliance may be granted "in the conduct of such business," suggesting that the relief must be narrowly applied to the reasonable conduct of business, and not to NFA weapons manufactured under the shield, but in excess, of a USG contract but with the intent to sell them later. In exceeding its authority, the Proposed Rule is contrary to law and violates the APA.

Second, the Proposed Rule contradicts the NFA's contemporaneous-registration design. Congress tied registration to the NFA weapon's creation: a manufacturer's notification of "the manufacture of a firearm" is what "effect[s] the registration. . . ."[30] Moreover, the Act makes it unlawful for "any person" to "possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record."[31] Indeed, ATF's own regulations permit a person unlawfully in possession of an unregistered NFA firearm to register it only "during an

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[26] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

[27] *Id.*

[28] 26 U.S.C. § 5851(a); *see* NPRM, 91 Fed. Reg. at 40945–46.

[29] NPRM, 91 Fed. Reg. at 40945.

[30] 26 U.S.C. § 5841(c).

[31] 26 U.S.C. § 5861(d).

amnesty period established under section 207 of the Gun Control Act of 1968."[32] Congress, not ATF, decides when previously unregistered weapons may enter the NFRTR. The Proposed Rule would create an inventory of NFA weapons that are not only unregistered for the life of the USG contract, but would remain unregistered after they fall out of contract in private commercial hands for up to 15 more days before any federal record of their existence is made. This is facially irreconcilable with the design of the Act, and as such exceeds the Director's authority under the Act.

Third, the Proposed Rule ignores the federal restrictions that govern the disposition of the very weapons it would allow to be registered. Since May 19, 1986, federal law has prohibited the transfer or possession of a machine gun except by or under the authority of a government, or where the machine gun was lawfully possessed before that date.[33] The Proposed Rule, in creating a means for machine guns to be registered, clearly interacts with an existing regulatory scheme. Yet, the NPRM never cites § 922(o) or its implementing regulation, 27 C.F.R. § 479.105. It does not consider that contract "residuals" could include machine guns manufactured before May 19, 1986, that were never registered, nor that registering that weapon today would arguably mint a newly transferable pre-1986 machine gun despite Congress freezing that supply four decades ago. It does not contemplate that even permitted transactions under § 922(o)(2)(A) are themselves vulnerable to diversion.[34] The proposed regulatory text contains no disposition limits of any kind—the sole hedge is a preamble aside that "most" of these weapons "would not be eligible to enter the non-government market."[35] That silence matters. If ATF intends to permit only lawful dispositions, and does not intend to permit registration of pre-1986 residuals into transferable status, the final rule must say so in regulatory text.

Finally, the Proposed Rule is irreconcilable with the NFA's purpose, which is explicitly and transparently one of public safety and "to curtail, if not prohibit, transactions in NFA Firearms."[36] As discussed above, the Proposed Rule would do significant, long-term damage to public safety. Moreover, as described below, the intent of these changes is to give economic benefits to manufacturers: an intent that the NPRM does not bother to try to reconcile with the intent of the Act. Because this Proposed Rule prioritizes other considerations at the expense of Congressional intent, it is contrary to law in violation of the APA.

B. The Proposed Rule Is Arbitrary and Capricious in Violation of the APA.

The Proposed Rule is unreasonable in several important ways, in violation of the APA.

First, the NPRM is unreasonable because it identifies no true issue. Its Need Statement, which is only two paragraphs long, makes clear that manufacturers successfully use the variance process, where appropriate, when USG-contracted NFA-regulated weapons fall out of contract.[37] The preamble states that the Director has long granted precisely this relief, stating

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[32] 27 C.F.R. § 479.101(b).

[33] 18 U.S.C. § 922(o); *see* 27 C.F.R. § 479.105.

[34] ATF's own data shows 208 machine guns recovered in crimes between 2019 and 2023 traced to law enforcement sources. *See NFCTA, Vol. IV; Part III* at 27 tbl.CGT-20.

[35] NPRM, 91 Fed. Reg. at 40949.

[36] ATF, *National Firearms Act Handbook*: *Ch. 1. Introduction* at 1 https://www.atf.gov/media/25141/download (last updated May 8, 2026).

[37] NPRM, 91 Fed. Reg. at 40948-49.

that ATF has "allowed such firearms to be registered 'late[,]'" even though the relief is not included in the regulations.[38] Plainly, this Proposed Rule is a solution in search of a problem.

The true purpose here seems found in the Need Statement's focus on manufacturers' requests "to register such 'rejected USG firearms' after they fall out of contract to avoid those costs and lost revenue."[39] This focus on the cost of contract performance to manufacturers reflects that the NPRM employs "information provided by a few industry members who manufacture destructive devices" and estimates of per-occurrence disposal costs of "$330 for a small contract to $1.2 million for a large contract" to conclude that the Proposed Rule "could result in $217.6 million annually in savings on disposal costs."[40] Similarly speculative formulas use information provided by an unknown number of "industry respondents" to conclude that "[m]anufacturers of destructive devices would thus collectively accrue an estimated annual profit from selling these destructive devices of $611.3 million annually."[41] Combining those sums, the NPRM claims the Proposed Rule would create "$828.9 million in savings and profit just for manufacturers of destructive devices."[42]

These assertions are contradictory. If variances already permit late registration (and thus permit sales), the rule's true benefit is convenience, not $828.9 million. If variances do not permit late registration, the NPRM's description of existing practice is wrong. Whether the Proposed Rule purports to solve a problem that does not exist to assist private defense contractors to get a windfall, or its justification for the Proposed Rule is based on a fundamental misunderstanding of existing procedures, the problem is the same: the Proposed Rule is necessarily unreasonable.

Second, ATF's explanation entirely fails to consider public safety. The Act's primary purpose is public safety. However, the NPRM's public-safety analysis states, in full: "Historically, as reflected in ATF crime gun data, registered NFA firearms are not commonly used to commit crimes. Therefore, ATF does not consider it a risk to the public if more registered devices move in commerce, particularly as most NFA firearms and destructive devices manufactured for the USG would not be eligible to enter the non-government market."[43] This is regulating with blinders on.

Notably, the ATF irrationally relies on the successful public safety track record of the current rule, to conclude that there is no risk to public safety if the rule is changed to become more lenient. It says nothing about the risks inherent in the population of registered weapons that would be added. These are weapons produced for the military, including items the government rejected, presumably in some cases for failing specifications, registered at some unknown time period after manufacture on only the manufacturer's attestation. Nor does the NPRM consider the data-quality risk to the registration system in allowing batch, after-the-fact registrations to a system that is already under strain.[44] And the analysis only considers the risk

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[38] *Id.* at 40945–46.

[39] *Id.* at 40948.

[40] *Id.* at 40949.

[41] *Id.* at 40950.

[42] *Id*.

[43] *Id.* at 40949.

[44] In its most recent comprehensive evaluation of the NFRTR, the Department of Justice's Office of the Inspector General found that "continuing management and technical deficiencies contribute to inaccuracies in the NFRTR database," and that 46.5 percent of ATF's own field inspectors "reported that they found a discrepancy between the NFRTR inventory report and a licensee's inventory 'always' or 'most of the time.'" U.S. Dep't of Justice,

of criminal use of registered weapons despite the risk of theft or loss of unregistered weapons from commercial inventories. ATF is well aware that contraband unregistered weapons in the States are a safety risk. When ATF referred subjects for prosecution in national illegal firearm recovery cases from 2017 to 2021, unlawful possession of a machinegun and receiving or possessing an unregistered NFA weapon were in the top three categories of associated criminal charges.[45]

Relatedly, the NPRM unreasonably ignores the States' significant public safety reliance interests in the current rule and policy (discussed above), which functions effectively to keep unregistered weapons from entering the black market and ending up recovered from crime scenes, where they create investigational dead ends that hamper law enforcement and frustrate public safety. Despite this reliance by the States, the NPRM fails to show good reasons or detailed justifications for the change.

On the contrary, the NPRM speculates that the sale of NFA weapons that fall out of USG contract could "possibly benefit state and local law enforcement organizations with less funding, who might be able to purchase such items at less cost than on the secondary market." This is not supported by data showing that the costs of such items are indeed lower or that state and local law enforcement cannot already purchase such items that are already on the market via the variances manufacturers can (and do) already receive. This speculation is inadequate. Because ATF has completely ignored the public safety concerns inherent in this issue, it has "entirely failed to consider an important aspect of the problem," has not reasonably explained its decision, and has therefore acted arbitrarily.[46]

Third, and more broadly, ATF does not reasonably explain itself with verifiable facts. This failure is pervasive. For example, the history of variances granted to manufacturers for late registration is both relevant to the Proposed Rule and within ATF's custody. However, ATF does not disclose how many variances it has issued, over what period, for which weapon types, on what conditions, or for how many weapons. It does not describe the process or requirements for an application for variance. Nor does it provide any information on how many of the 384 federal licensees qualified to manufacture destructive devices *actually* hold government contracts, despite using the assumption that every one of them experiences one to five contract fall-outs per year as the basis of ATF's savings and profit calculations.[47]

ATF concedes the gaps in its own data, admitting that it "lacks data on manufacturers of NFA firearms (other than destructive devices) who would be affected by this proposed rule"; that it "has no data on whether manufacturers in this situation currently export firearms"; that it "cannot estimate their annual offset without data on how often this might occur"; and that it "has no information on how often each type of situation might arise."[48] The same analysis certifies, under the Regulatory Flexibility Act, that the rule's effect on small entities is "de

Office of the Inspector General, *The Bureau of Alcohol, Tobacco, Firearms and Explosives' National Firearms Registration and Transfer Record*, Report No. I-2007-006 at i, vii (June 1, 2007), https://oig.justice.gov/reports/bureau-alcohol-tobacco-firearms-and-explosives-national-firearms-registration-and-transfer.

[45] *NFCTA, Vol. III; Part X* at 5.

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

[47] NPRM, 91 Fed. Reg. at 40949–50.

[48] *Id*. at 40948–50.

minimis" while claiming a nine-figure annual effect on the economy and admitting ATF has no data on which entities, small or large, are affected.[49]

Most worryingly, the information ATF relies on to support its claims of savings and profit was purposefully withheld from the public. Although ATF admits that supporting data was provided by an unknown number of "industry members," two footnotes briefly explain that "ATF is not including the underlying data in this rule from these industry members because it was provided under a promise of confidentiality due to competitive market considerations."[50] An agency may proceed on imperfect data, but it may not claim nearly a billion dollars in annual benefits while overlooking relevant data, conceding it lacks the information from which any such figure could reasonably be derived, and relying near-exclusively on data it has purposefully withheld from the public.[51]

Fourth, an agency changing a regulatory regime must consider "the alternatives within the ambit of the existing policy[,]"[52] and ATF considered only three: no action, the Proposed Rule, and non-binding guidance.[53] It never considered: (1) codifying the existing case-by-case variance process with published criteria, preserving individualized review of each request; (2) requiring prior ATF approval before any out-of-contract weapon is registered, rather than post-hoc notice; (3) immediate notification of contract fall-out — within 24 or 72 hours — with the 15 days reserved for completing marking and registration data; (4) express disposition limits confining registered weapons to government sales, qualified licensees, or export, consistent with the economic analysis's own assumption that resales would run "primarily to another government entity";[54] (5) exclusion, or heightened review, of weapons rejected for defects and weapons whose chain of custody cannot be documented; (6) enhanced storage, inventory, and theft- and loss-reporting requirements during the interim window; (7) government certification of the item count and identity at contract termination; (8) periodic audits of participating manufacturers; and (9) annual public reporting of the number, types, and dispositions of weapons registered under the provision. The States do not offer these as substitutes for withdrawal; they identify them because the APA required ATF to consider obvious, less harmful alternatives, and ATF considered none of them.

Finally, the NPRM frames the Proposed Rule as a common-sense clarification of standing policy, when it is in fact a change in long-standing regulation and policy that will have a substantive impact. The changes upend the current system, where NFA weapons must be registered by the close of the next business day after manufacture,[55] manufacturers are relieved from registering weapons they manufacture for the USG pursuant to contract,[56] and manufacturers may only register weapons that fall out of USG contract by individual variance from ATF, granted only on request from the manufacturer. Pretending otherwise is not reasonable.

[49] *Id*. at 40951–52 (NFA registration describing a "de minimis—$58 annual cost per manufacturer").

[50] *Id*. at 40949-50, nn.8 & 10.

[51] *State Farm*, 463 U.S. at 43 (agency must "examine the relevant data and articulate a satisfactory explanation for its action. . . .").

[52] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020).

[53] NPRM, 91 Fed. Reg. at 40950–51.

[54] *Id.* at 40949.

[55] 27 C.F.R. § 479.103.

[56] 26 U.S.C. § 5841(a).

C. The Proposed Rule Is Procedurally Defective in Violation of the APA.

The Proposed Rule suffers from several procedural defects that are independent of, and compound, its 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. ATF did not satisfy those requirements.

First, ATF's segmented rulemaking prevents meaningful comment on the rules' cumulative effect. ATF has divided dozens of interlocking proposals among separate dockets, each asking the public to assess one component while assuming the rest of the regulatory system remains stable. This NPRM would expand the commercial supply of NFA weapons at the same time companion proposals would reduce the identity verification surrounding NFA acquisitions, ease machine-gun transfers between qualified licensees, and alter NFA marking practices.[57] No docket analyzes the NFA system that ATF now proposes to create, even though *State Farm* requires consideration of the "relevant data," including the cumulative effects of related, contemporaneous rules.[58] Before finalizing any of them, ATF must identify the interrelated rulemakings, analyze their combined effects on NFA registration integrity, traceability, and state enforcement systems in each docket, and reopen the comment periods so the public and the States can address the regulatory system ATF actually proposes.

Second, ATF failed to conduct required consultation with the States under Executive Order 13132. The NPRM certifies, in a single sentence, that the rule "would not have substantial direct effects on the states,"[59] and identifies no consultation with any State despite proposing to expand the commercial supply of weapons that are contraband under the laws of many States, and despite the States' documented reliance on the federal registry the rule would degrade. Whether or not the Executive Order is independently enforceable, the false certification evidences the analytical failure that pervades the NPRM.

Third, ATF should disclose the outside communications that shaped this rulemaking package. In materials accompanying the package, ATF states that "[n]one of these rules were drafted directly or indirectly by any member of the gun industry."[60] Yet ATF's own public communications describe the package as built on "partnership with the firearms industry,"[61] the NPRM utilizes information provided by "a few industry members"[62] while refusing to share the details of that information,[63] and industry organizations have publicly claimed credit for

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[57] *See Fingerprint and Photograph Requirements for Firearms Applications*, 91 Fed. Reg. 40924 (proposed July 6, 2026) (to be codified at 27 C.F.R. pts. 478 and 479); *Transferring Machine Guns Between Qualified Licensees*, 91 Fed. Reg. 24485 (proposed May 6, 2026) (to be codified at 27 C.F.R. pt. 479); *Allowing Makers To Adopt Certain Markings for National Firearms Act Firearms*, 91 Fed. Reg. 24466 (proposed May 6, 2026) (to be codified at 27 C.F.R. pt. 479).

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

[59] NPRM, 91 Fed. Reg. at 40951.

[60] *New Era of Reform Questions and Answers: "How much direction did ATF take from the gun industry?"* ATF, www.atf.gov/rules-and-regulations/atf-launches-new-era-reform/questions-and-answers (last visited Sept. 3, 2026).

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

[62] NPRM, 91 Fed. Reg at 40949.

[63] *Id*. at 40949-50, nn.8 & 10.

shaping it.[64] The NPRM itself acknowledges that "administration priorities" shaped the decision to proceed by regulation rather than guidance.[65] ATF should place into the docket all materials concerning pre-NPRM and post-NPRM communications with industry representatives, trade associations, advocacy organizations, and other stakeholders concerning this rule, and reopen the comment period so the public can test, examine, and comment on the materials on which ATF relied.

IV. Conclusion

For all of these reasons, the States urge ATF to withdraw the Proposed Rule.

Sincerely,

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[64] *See ATF's New Era of Reform*, ATF, https://www.atf.gov/rules-and-regulations/atf-launches-new-era-reform (last updated May 12, 2026); *DOJ and ATF Announce Regulatory Reforms to Reduce Burdens on Law-Abiding Gun Owners and Businesses*, DEP'T OF JUST. (Apr. 29, 2026), https://www.justice.gov/opa/pr/doj-and-atf-announce-regulatory-reforms-reduce-burdens-law-abiding-gun-owners-and-businesses; NSSF, *NSSF Welcomes ATF Landmark Rulemaking Package*, NSSF (Apr. 29, 2026), https://www.nssf.org/articles/nssf-welcomes-atf-landmark-rulemaking-package/.

[65] NPRM, 91 Fed. Reg. at 40951.

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