EVERYTOWN
FOR GUN SAFETY | SUPPORT FUND

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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 Ave. NE
Washington, DC 20226

Re: <u>Docket No. ATF-2026-0011; RIN 1140-AA69</u>
<u>Comment on Proposed Rule on "Definition of Business Premises"</u>

To Whom It May Concern:

Everytown for Gun Safety Support Fund[1] ("Everytown") submits this comment in response to the notice of proposed rulemaking ("NPRM") issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") amending regulations regarding "business premises."

Federal law creates a number of obligations for federal firearms licensees ("FFLs") with respect to their business premises. For example, under 18 U.S.C. § 923(a), no person can engage in the business of dealing firearms unless the person has filed an application with the Attorney General and paid a separate fee for each place in which the application is required to do business. Under 18 U.S.C. § 923(d)(1)(E)(i), in order for an applicant to be approved for a license, the applicant must have "premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time." Under 18 U.S.C. § 923(g) and (h), an FFL must maintain the license and required records at their business premises, and under 18 U.S.C. § 922(c), an FFL may not sell a firearm to a person who does not appear in person at the licensee's business premises except in limited circumstances.[2] Dealers applying for a license must also certify, pursuant to 18 U.S.C. § 923(d)(1)(G), "that secure gun storage or safety devices will be available at any place in which firearms are sold under the license to persons who are not licensees." Further, federal regulations authorize ATF personnel to enter the premises of any FFL to inspect or examine the FFL's records or inventory stored at such premises to ensure compliance with federal firearms laws.[3] Having a separate

[1] Everytown for Gun Safety Support Fund is the education, research and litigation arm of Everytown for Gun Safety, the largest gun violence prevention organization in the country with nearly 11 million supporters and more than 700,000 donors. The Everytown Support Fund seeks to improve our understanding of the causes of gun violence and help to reduce it by conducting groundbreaking original research, developing evidence-based policies, communicating this knowledge to the American public, and advancing gun safety and gun violence prevention in communities and the courts.
[2] Additionally, 27 C.F.R. § 478.91 provides that "Any license issued under this part shall be kept posted and kept available for inspection on the premises covered by the license."
[3] 27 C.F.R. § 478.23

license for each FFL business premises helps ensure that these important obligations are met and that ATF can effectively inspect licensees and enforce all federal requirements on the operation of their business.

Currently, ATF regulations at 27 C.F.R. § 478.11 define "business premises" for FFLs as "[t]he property on which the manufacturing or importing of firearms or ammunition or the dealing in firearms is or will be conducted."[4] With this proposed rule, ATF seeks to amend the regulatory definition of "business premises" to include situations where an FFL owns or leases: (i) properties that are adjoining (i.e., touching); and (ii) properties that are adjacent (i.e., near) to each other and that adjoin a common parking lot, sidewalk, or road.[5] The NPRM also proposes to amend 27 C.F.R. § 478.50, which provides exceptions to the general requirement that an FFL must obtain a separate license for each location at which the FFL's business is conducted.

This proposed rule has several problems which must be addressed to avoid potential confusion and manipulation involving firearms business activities at multiple licensee premises, which would undermine FFL compliance with required obligations and increase risks to public safety.

I. ATF should rescind or modify clause (ii) of its proposed regulatory definition to ensure that FFLs do not manipulate multiple locations in multi-store shopping centers or across roadways to avoid required obligations.

First, we have significant concerns that clause (ii) of the NPRM's definition, which would treat properties "that are adjacent to each other and adjoin the same parking lot, sidewalk, or road" as one business premises, has potential for ambiguity and abuse, and we recommend that ATF either rescind this clause or make revisions to minimize that risk.

Clause (ii) of the revised definition in the NPRM covers situations where multiple businesses or properties operated by an FFL are physically separated. Currently, such FFLs are required to obtain a separate license for each location because of this lack of physical proximity. By way of example of the type of scenario where an FFL would no longer need to obtain a separate license for multiple premises, the NPRM offers "where an FFL owns or leases more than one location in a shopping outlet where the stores are separated by other business entities, but they both share the same parking lot" or "if an FFL owns or leases two locations that are directly across the street from each other — in other words, the properties would be adjoining but for a bisecting road."[6] The NPRM proposes to treat such multiple locations sitting across the street from each other or sharing the same parking lot as a single business premises.

While the NPRM uses these examples to suggest that such "adjacent" business locations are located within such close proximity as to be treated as if they are connected, it is easy to envision many examples of the opposite being true. For example, there are many shopping outlets (e.g., multilevel malls, outdoor shopping centers) that have dozens or even hundreds of business entities adjoining common parking lots that may wrap around the entire area. In addition, two businesses could be located "directly across the street from each other," but that

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[4] 27 C.F.R. § 478.11. The definition also provides that "A private dwelling, no part of which is open to the public, shall not be recognized as coming within the meaning of the term."
[5] 91 Fed. Reg. 24409.
[6] *Id*.

street could be a major four-lane roadway separated by a median that has limited visibility between the two.

In such circumstances, separate business properties physically separated (potentially both horizontally and vertically) by multiple other business entities or by a public roadway should not be considered "adjacent." If an FFL is conducting business from multiple non-touching storefronts under clause (ii) but treating them as a single business premises, the FFL may not be maintaining required records or keeping records and inventory straight at each location, risking those records becoming lost or not capable of being efficiently inspected by ATF or used for tracing firearms in criminal investigations.

The FFL may also end up not meeting other obligations at each storefront location, such as making secure gun storage or safety devices available. Additionally, the FFL may end up shifting firearm inventory between locations in order to facilitate in-person transactions or deliveries from both locations, creating a risk of loss, theft, recordkeeping errors, and unsupervised illicit transactions during transit between locations. These are the types of risks that current law helps reduce by requiring a separate license for each FFL business location. ATF must take care not to create loopholes or opportunities for manipulation that amplify these risks.

To avoid situations where FFLs seek to operate multiple storefronts within large malls or shopping centers or across roadways which are inappropriately treated as one business premises, ATF should strike clause (ii) of its proposed definition. Alternatively, ATF should revise clause (ii) of its definition to set a numerical cap on the number of storefronts that can be adjoining the same parking lot, sidewalk, or road for two or more non-touching FFL properties to still be considered adjacent under clause (ii).

For example, ATF could amend clause (ii) to cover "[p]roperties that are adjacent to each other <u>in a shopping outlet of 10 or fewer storefronts</u> and adjoin the same parking lot, sidewalk, or road" in order to reduce potential confusion among observers and reaffirm the NPRM's intent to limiting "business premises" to properties that are clearly and identifiably next to one another even if separated by a road, sidewalk, or parking lot.

ATF should further revise clause (ii) in this proposal to eliminate the ability for two businesses that are separated by an active public roadway to share a single license. ATF must not leave these weaknesses in clause (ii) unaddressed and subject to potential abuse.[7]

II. <u>ATF must require FFLs to update address records if the FFL obtains adjacent property and intends to use it as business premises</u>.

Second, the NPRM should be revised to provide that if an FFL has obtained a license for its business premises and then buys or leases an adjacent, but not adjoining, property from which the FFL intends to engage in licensed business activities under clause (ii) of the new "business premises" definition, the FFL should be required to report the address of that adjacent property to

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[7] While the NPRM mentions that its proposed expansion of the definition of business premises is consistent with ATF's 2020 guidance and with variances that ATF has given for properties adjacent to each other and adjoining the same parking lot, the 2020 guidance does not discuss multiple properties at the same shopping mall or shopping center with dozens or hundreds of business entities or separated by public roadways, and the NPRM does not mention variances involving such scenarios.

ATF prior to the use of that property for licensed business activities.

ATF should consider updating its change-of-address regulations at 27 C.F.R. § 478.52 and amending ATF Form 5300.38 to provide for licensees' submission of additional information on any adjacent properties that the licensee has acquired since obtaining the license and that the licensee intends to use for licensed business activities. Such reporting is important in part because of the subjectivity involved in determining whether properties fit the new definition's clause (ii). The NPRM acknowledges that in considering whether properties are adjacent, "each situation would need to be evaluated on its circumstances."[8] Thus, FFLs that acquire or lease adjacent "clause (ii)" properties after already obtaining their license should make ATF aware of that new property's address so ATF can determine if clause (ii) actually applies.

Upon receiving the submission of such information via a Form 5300.38, ATF should also update the eZ Check system entry for that FFL's business premises address to include each address for adjacent "clause (ii)" properties where the FFL engages in licensed business.

III. Any changes to the regulatory definition of "business premises" must be carefully aligned with any changes ATF makes to allow eZ Check verification of firearm transfers between FFLs.

Third, there are concerns about the intersection between this NPRM and any version of ATF's recently-withdrawn direct final rule on "Licensee 'eZ Check' verification for transfers" that ATF may propose in the future.[9] Before it was withdrawn, ATF's direct final rule on eZ Check would have allowed FFLs that are transferring one or more firearms to another FFL to verify the other FFL's license through ATF's FFL eZ Check system instead of complying with the current requirement that the transferor FFL obtain a certified copy of the transferee FFL's license. But the eZ Check system may not have all FFL locations included in the information for that FFL – a concern that would be even greater if this proposed rule is adopted and allows multiple location addresses to be considered as the same business premises.

The intersection between this NPRM and proposals to allow eZ Check verification to supplant the current requirement to obtain a license copy when firearms are being shipped between FFLs creates opportunities for manipulation and abuse. Everytown and other organizations filed comments raising concerns that the eZ Check direct final rule could have facilitated fraudulent schemes where a person misappropriates an FFL's license number, license expiration date, and business address that the person had found online and uses that information to impersonate the FFL – because the transferor FFL may not realize the impersonation when verifying the provided information through eZ Check.[10] Under the direct final rule, the fraudulent transferee then could have sought to have the transferor FFL send the firearm(s) to a mailing address that is different from the business premises address provided, and there would be no way to confirm on eZ Check if the mailing address is legitimate since only the transferee FFL's business premises address is listed in eZ Check.

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[8] 91 Fed. Reg. 24409.
[9] 91 Fed. Reg. 24357; withdrawn by 91 Fed. Reg. 40879.
[10] *See* comment letter of Everytown for Gun Safety Support Fund, GIFFORDS Law Center to Prevent Gun Violence, and Brady, Comment on FR Doc #2026-08924, *available at* https://www.regulations.gov/comment/ATF-2026-0009-0029.

Under the proposed "business premises" rule, a fraudulent transferee could supply a mailing address that is adjacent to an FFL's business premises under clause (ii), *e.g.*, another location in a shopping outlet that shares the same parking lot with an FFL, claim to the transferor FFL that the adjacent mailing address was part of the business premises of the FFL whose information was misappropriated, and arrange to pick up the shipped firearms from that fraudulent adjacent mailing address.

This scenario should be safeguarded against, both in any potential version of the eZ Check rule that may be proposed in the future, as well as in this NPRM. For example, this NPRM's proposed regulatory language in 27 C.F.R. § 478.50(e) should make clear that the business a licensee may conduct at the separate property parcel the licensee owns or uses does not include receiving shipments of firearms from a transferor FFL at the separate property parcel unless that property address has been reported by the FFL to ATF as part of the FFL's business premises and added to the ATF eZ Check system. Otherwise, such firearm shipments should only be made to the primary property address that is the business premises of the FFL.

IV. **<u>ATF must conduct a credible cost-benefit analysis that assesses potential risks to public safety</u>.**

Finally, we note that ATF's NPRM provides only a cursory cost-benefit analysis of the proposed rule and only considers as part of that analysis potential savings that certain FFLs would achieve by no longer having to apply for and maintain separate licenses at multiple locations.[11] The NPRM's cursory discussion is inadequate for a cost-benefit analysis, and ATF appears to recognize as much, requesting "more information from the public regarding economic effects that this rulemaking may have on the public and the regulated industries."[12]

A credible cost-benefit analysis would necessarily take into account the benefits that the current system provides. Changing the current system by allowing more FFL business locations to avoid separate licensure would have a cost to the effectiveness of ATF inspections and enforcement and potentially to public safety as well. Such a cost-benefit analysis could well find that the loss of those benefits does not outweigh the only justification given for this rule, which is to save the subset of FFLs with multiple locations an extremely modest amount of money and time, *i.e.*, several hundred dollars and one hour per entity.

ATF must not let the goal of providing savings for FFLs override the procedural necessity for a full cost-benefit analysis, and as part of that analysis ATF must credibly estimate the impact of the proposed rule on public safety and ATF's ability to effectively inspect FFL locations and ensure compliance with federal firearms laws.

V. **<u>Conclusion</u>**

We urge ATF to follow the recommendations provided in this comment, as they will help ensure that ATF's NPRM does not unnecessarily create confusion, facilitate manipulation, or undermine FFLs' compliance with legal obligations in ways that might endanger public safety.

Thank you for your consideration of this comment.

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[11] 91 Fed. Reg. 24410-11.
[12] 91 Fed. Reg. 24411.

Sincerely,

/s/ Justin Wagner

Justin Wagner
Senior Vice President for Law & Policy
Everytown for Gun Safety Support Fund