



August 4, 2026

*By electronic submission to <https://www.regulations.gov>.*

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: Docket No. ATF–2026–0007; RIN 1140-AA84**  
**Comment on Proposed Rule on “Clarifying Delivery to a Common or Contract Carrier When Transporting Firearms”**

To Whom It May Concern:

Everytown for Gun Safety Support Fund<sup>1</sup> (“Everytown”) submits this comment in response to the notice of proposed rulemaking (“NPRM”) issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) that would amend regulations governing the transport or shipment of firearms in packages, luggage, or other containers on common carriers or contract carriers. **ATF’s proposed rule seeks to contravene or bypass statutory language and caselaw in an effort to allow more passengers to bring firearms in luggage on trains, buses, ferries, taxis, and rideshares without notifying the operator of the vehicle, thus increasing the risk of lost or stolen firearms, illicit firearms trafficking, and situations where other passengers cannot tell if a passenger transporting firearms is law-abiding or a criminal threat.** We urge ATF to withdraw this proposed rule for the reasons discussed below.

**I. Longstanding federal law requires that carrier vehicle operators be given notice and, in certain cases, custody of containers holding firearms that are brought on board their vehicles so they can ensure the containers are appropriately safeguarded.**

Section 922(e) of the Gun Control Act of 1968 makes it unlawful for a person to knowingly deliver to a common carrier (e.g., a bus, train, ferry, airplane, or taxi) or contract carrier (e.g., a commercial shipping service) for transport or shipment any package or container in which there is a firearm or ammunition unless the person provides written notice to the carrier

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<sup>1</sup> 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.

that the firearm or ammunition is being transported or shipped.<sup>2</sup> Section 922(e) provides an exception if the owner or possessor of the container holding the firearm<sup>3</sup> is also a passenger on the carrier and delivers the firearm into the custody of the carrier operator for the duration of the trip. The statute also contains one additional restriction: “No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.”<sup>4</sup>

Section 922(e) was designed to ensure that firearms are not brought in packages, luggage, or any other containers onto common- or contract-carrier vehicles without the operator of the vehicle having notice of the firearm’s presence and, in some circumstances, custody of the firearm for the duration of the trip. Under the statute’s plain language and design, if a container of any sort containing a firearm is brought on board a common or contract carrier vehicle for transportation or shipment and the owner or possessor of the firearm is not also going to be on board, written notice must be provided to the carrier. If the owner/possessor is also going to be on board, then the owner/possessor does not have to provide written notice to the carrier if the owner/possessor places the container carrying the firearm into the custody of the person operating the carrier vehicle.

This notice or custody requirement serves important public safety purposes. If a firearm is being shipped in a package through a contract carrier that is a shipping service, alerting the carrier about the firearm’s presence helps the carrier take extra precautions to ensure that the firearm is not lost, stolen, or delivered to the incorrect recipient or address, such as expedited shipping and requiring a signature from the addressee. If the firearm is brought by a passenger onto a common carrier in a package, backpack, luggage, or another type of container, there is risk that the container may be:

- lost or misplaced by the passenger, such as if the container is left under a seat or on a luggage rack;
- stolen by another passenger;
- subject to an unintentional discharge if the firearm was packed with a bullet in the chamber and the firearm discharged upon the container being dropped;<sup>5</sup> or
- observed by another passenger, the carrier operator or staff, or law enforcement who realizes the container holds a firearm and does not know if the firearm is being transported lawfully or represents a potential criminal or public safety threat.

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<sup>2</sup> 18 U.S.C. § 922(e).

<sup>3</sup> While the provisions of 18 U.S.C. § 922(e) and its implementing regulations apply to both firearms and ammunition, for simplicity’s sake this comment refers just to firearms.

<sup>4</sup> 18 U.S.C. § 922(e). The inclusion of “luggage” in this sentence along with “package” demonstrates Congress’ intent that luggage, like packages, be viewed as “containers” given that both are followed by the inclusion of “any other container.”

<sup>5</sup> Owners often fail to realize that a firearm is unloaded when, in fact, a bullet remains in the chamber. *See, e.g.*, Colo. Dep’t of Pub. Health & Env’t, Unintentional Firearm Injuries, available at <https://cdphe.colorado.gov/colorado-gun-violence-prevention-resource-bank/injury-and-death-involving-firearms/unintentional>. Loaded guns can discharge upon impact when dropped accidentally. *See, e.g.*, Jose Pagliery, “Trigger Warning,” CNN (June 6, 2018), available at <https://www.cnn.com/interactive/2018/06/investigates/sig-sauer-p320-drop-fire/>.

Notice and/or custody help enable carriers to: (1) ensure that firearm containers are properly secured; (2) protect the safety of carrier operator staff and other passengers; and (3) take other steps to minimize risks that transported firearms might be misplaced, forgotten, stolen, or trafficked, or that other passengers might raise alarm upon realizing a fellow passenger is transporting firearms.

If passengers were more broadly permitted to transport firearms on carriers in luggage or other containers without having to notify the carrier about the firearms' presence or place the containers in the carrier's custody, it not only would increase the risk of stolen or lost guns but would also make it easier for firearms traffickers to transport illicit firearms using the carrier. The safeguards established by section 922(e) have helped prevent the use of common or contract carriers for such trafficking, as only 4.4% of ATF's trafficking investigations between 2017 and 2021 involved firearms transported via common carrier and 2.9% involved guns transported via freight shipment.<sup>6</sup> Section 922(e)'s safeguards also have been effective in reducing the possibility of thefts of firearms from common carriers, as only 0.6% of ATF trafficking cases between 2017 and 2021 involved firearms stolen from a common carrier.<sup>7</sup> The proposed rule threatens the relatively effective framework currently in place that has yielded such statistics.

## **II. The proposed rule would create broad new exceptions to current law that would allow more carrying of firearms in containers on vehicles without the vehicle operators' awareness, in contravention of both statutory language and caselaw.**

ATF's proposed rule seeks to amend regulations that implement section 922(e) to write new, sweeping exceptions into current law without congressional action or approval. The proposed rule seeks to create a passenger "direct control" exception to section 922(e)'s written notice or custody requirements that contravenes both the statutory text and a key circuit court decision. The proposal also seeks to reinterpret the meaning of "common or contract carrier" to exclude a wide range of vehicle carriers without a credible basis for doing so. These changes would reduce notice to carrier operators about the presence of firearms on their vehicles and would make the carrier operators, passengers, and the public less safe.

### **A. ATF's proposed exception for when a passenger "maintains direct control" over a container holding a firearm contradicts the statutory language and caselaw.**

The proposed rule seeks to amend the regulations implementing section 922(e) to exempt passengers travelling aboard a common or contract carrier with a container holding a firearm from having to either provide written notice to the carrier or place the container in the vehicle operator's custody if the passenger "maintains direct control" over the firearm for the duration of the trip.<sup>8</sup> This proposed regulatory exception directly contradicts the plain text of section 922(e)'s requirement that if a container holding a firearm is being transported by the firearm's owner/possessor who is also a passenger on board, the passenger must either provide the carrier with written notice or place the container in the vehicle operator's custody for the trip. There is no "maintains direct control" exception for passengers provided in the statute. In fact, the statute

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<sup>6</sup> See ATF, National Firearms Commerce and Trafficking Assessment, Volume III: Firearms Trafficking Investigations, Part III: Firearm Trafficking Channels and Methods Used, at p. 5, Table FTMM-01 (Apr. 2024), available at <https://www.atf.gov/media/20751/download>.

<sup>7</sup> *Id.*, at p 2, Table FTC-02.

<sup>8</sup> Proposed 27 C.F.R. § 478.31(e).

says just the opposite: passengers seeking to avail themselves of the “passenger exception” can only do so by “deliver[ing] said firearm or ammunition into the custody of the pilot, captain, conductor or operator” of the carrier “for the duration of the trip.”<sup>9</sup>

In an effort to avoid this clear textual conflict, ATF’s NPRM seeks to reinterpret the meaning of “deliver,” claiming that it should not be construed to cover situations where a person “carries a firearm directly on his person” or “maintain[s] direct, accessible control over the firearm” when boarding or travelling on a carrier.<sup>10</sup> However, ATF’s reinterpretation contradicts a binding Fourth Circuit decision, *U.S. v. Hartzog*, which held that a passenger carrying bags containing firearms onto a common carrier constitutes a “delivery” by the passenger under 922(e).<sup>11</sup>

*Hartzog* involved a defendant who boarded a train with firearms in bags on his back without providing the carrier notice or delivering the bags to the carrier’s custody. The defendant had used a straw purchaser to buy guns on his behalf because he was prohibited from purchasing firearms. ATF agents investigating the defendant followed him as he took seven straw-purchased guns onto a train heading to New York from Virginia, and the agents apprehended the defendant after he boarded. The defendant was charged and convicted on multiple firearm-related counts, including violating section 922(e). On appeal, the defendant argued that he did not “deliver” the firearms to the common carrier under 922(e), claiming that to constitute a delivery “the owner must not retain any manner of control over the goods.”<sup>12</sup> The Fourth Circuit rejected the argument that there can be no delivery without relinquishment of control, concluding that “where one, while in the unreported possession of a firearm, comes into physical contact with a carrier during the act of boarding that carrier, he can be said to have delivered the firearms to the carrier for transportation within the meaning of section 922(e).”<sup>13</sup>

The *Hartzog* case clearly establishes that a passenger carrying bags containing firearms onto a common carrier constitutes a “delivery” by the passenger under section 922(e), and that the passenger must therefore provide notice to the carrier or else place the luggage in the operator’s custody during the trip. ATF cannot simply disregard this precedent. But that is exactly what ATF seeks to do so in this NPRM by arguing that the agency reads the text of section 922(e) differently than the Fourth Circuit and that, in ATF’s interpretation, in cases where a passenger carries a firearm “directly on his person” or within his “direct, accessible control,” the passenger “does not deliver a ‘package’ or ‘other container.’ He simply has possession of the firearm.”<sup>14</sup>

ATF’s attempt to bypass the *Hartzog* precedent is legally unjustifiable as well as unpersuasive. ATF tries to claim that *Hartzog* is an outlier by arguing that “it does not appear that any other federal courts of appeal have interpreted the meaning of ‘delivery’ for purposes of 18 U.S.C. 922(e) as broadly and expansively as the Fourth Circuit did in *Hartzog*.”<sup>15</sup> Yet ATF overlooks a Sixth Circuit case, *U.S. v. Krug*, in which the Sixth Circuit explicitly stated that it

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<sup>9</sup> 18 U.S.C. § 922(e).

<sup>10</sup> 91 Fed. Reg. 24397.

<sup>11</sup> *U.S. v. Hartzog*, 983 F.2d 604 (4th Cir. 1993).

<sup>12</sup> *Id.* at 606.

<sup>13</sup> *Id.* at 607.

<sup>14</sup> 91 Fed. Reg. 24397.

<sup>15</sup> *Id.*

agreed with the *Hartzog* court's interpretation of section 922(e).<sup>16</sup> *Krug* involved a defendant who claimed he did not "deliver" a bag containing a firearm and silencer to an airline when he put the bag in the baggage well at the checkout counter. The Sixth Circuit approvingly quoted the *Hartzog* court's statement that "[a] delivery of a firearm is effectuated as much when it is placed upon or affixed in some way to an exterior appurtenance or when it is surrendered to carrier employees for loading, as when it is carried into the interior cabin of a carrier," stating "[w]e agree with this interpretation of the statute."<sup>17</sup> *Hartzog* and *Krug* both reinforce the proposition that carrying a firearm-containing bag into the interior of a common carrier constitutes a delivery.

Further, ATF's argument seeks to conflate situations where a passenger carries a firearm directly on their person (such as in a pocket or a holster) with situations where a passenger brings a container holding a firearm on board. If the firearm is in a container, it can foreseeably be separated from the passenger's direct control, e.g., if the passenger keeps a luggage bag or backpack containing the firearm under the passenger's seat on a bus, or places a container in an overhead luggage rack on a train. This creates risks that the container may be forgotten, stolen, or perceived as a threat by others, especially on hop-on, hop-off carriers like buses, trains, ferries, taxis, or rideshares. These are the risks that section 922(e)'s notice and/or custody requirement was designed to safeguard against. Moreover, these risks are why there is no allowance in the statutory text of section 922(e) for a passenger to bring a firearm-containing container on board without either providing written notice or placing the container in the operator's custody. Simply put, if the firearm is in a "container" of any sort (including a backpack like in the *Hartzog* case) section 922(e) and *Hartzog* apply. If the passenger with the container wants to board the carrier's vehicle, they must provide written notice or else turn the container over to the custody of the carrier operator so they can safeguard it.

**B. The proposed rule lacks a credible basis to exclude municipal and regional mass transit from the definition of common or contract carrier.**

The proposed rule also seeks to create a new exception to the regulatory meaning of "common or contract carrier," providing that the term does not apply to municipal or regional mass-transit buses and trains, including those that cross state lines, for which passengers cannot deliver the firearm into the operator's custody.<sup>18</sup> This means that, under the proposed rule, passengers on such buses and trains would not need to notify the carrier operator about the presence of a firearm in luggage or another container, and also that the passengers would not need to maintain direct control of their luggage, since the proposed rule's "direct control" exception only applies to transport on vehicles that meet the rule's regulatory definition of "common or contract carrier."

ATF claims this metro bus and train exception is justified because municipal or regional transit carriers have "no checked baggage service" and passengers "cannot deliver the firearm ... to the operator ... nor provide effective written notice."<sup>19</sup> As a factual matter, ATF does not provide evidence showing that passengers cannot provide effective written notice for such

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<sup>16</sup> *U.S. v. Krug*, 20 Fed. Appx. 271 (6th Cir. 2001).

<sup>17</sup> *Krug* at 275, citing *Hartzog* at 607.

<sup>18</sup> Proposed 27 C.F.R. § 478.31(e).

<sup>19</sup> 91 Fed. Reg. 24398.

carriers, especially if the notice can be provided at ticket kiosks or through online ticket apps. Further, it is unclear why ATF would emphasize the importance of passengers maintaining direct control over luggage for some common carriers but not for metro buses or trains, given the risk of loss, theft, and trafficking over such modes of transport. Additionally, ATF provides no analysis in the NPRM of how this exemption intersects with current state or local laws regarding firearm carriage on mass transit, nor does the NPRM's cursory cost-benefit analysis examine the potential costs or burdens that state and local jurisdictions would bear as a result of this change.

**C. The proposed rule lacks a credible basis to exclude taxis, limousines, and rideshare vehicles from the definition of common or contract carrier.**

The proposed rule also seeks to create a new exception to the regulatory meaning of “common or contract carrier” for “public or private for-hire vehicles (e.g., taxis, limousines, or rideshares, etc.).”<sup>20</sup> Like the metro bus and train exemption, this exemption from the definition of “common or contract carrier” means that passengers taking a cab, limo, or rideshare like Uber or Lyft would not need to notify the driver that the passenger has a gun in their luggage, nor would the passenger need to keep the luggage in their “direct control” for the duration of the trip since the proposed rule’s “direct control” exception only applies to carriers.

ATF seeks to justify this exemption by saying, without any cited support, that ATF “does not believe that section 922(e) was intended to apply to public or private for-hire vehicles (e.g., taxis, limousines, rideshares, etc.) in which customers do not customarily check baggage or provide written notice about the contents of their baggage.”<sup>21</sup> But drivers of those vehicles routinely put passengers’ bags in the car trunk, which is functionally equivalent to checking luggage. Drivers must be made aware if firearms are present in the luggage as the driver often handles the luggage and the luggage may be forgotten and left behind by the passenger. The NPRM also does not explain why passengers in those circumstances could not provide written notice for rideshares in the form of electronic notice on a ride-sharing app. And ATF again provides no analysis in the NPRM of how this exemption intersects with current state or local laws or company policies regarding firearm carriage in taxis, limos, or rideshares, nor does ATF’s cost-benefit analysis examine the potential costs, burdens, or risks that the proposed rule would place on these stakeholders.

**III. The proposed rule’s changes would put public safety at greater risk and are inadequately justified.**

ATF’s proposed rule appears intended to reduce the likelihood that a passenger would be prosecuted under section 922(e), but in doing so it would undermine the important public safety purposes that the statute serves. ATF’s proposal would exempt broad swaths of situations where firearms are transported from the statutory purpose of giving operators of common and contract carriers notice that firearms are present in luggage or containers on the vehicles they operate and the ability to ensure the firearms are secured. For example, the proposal would give federal law’s blessing for people to carry undisclosed bags of guns onto municipal buses or metro trains, or to secretly bring a gun in their luggage on a rideshare or taxi trip even if there are other passengers sharing the car. The proposal thus increases the risk that luggage and other containers containing

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<sup>20</sup> Proposed 27 C.F.R. § 478.31(e).

<sup>21</sup> 91 Fed. Reg. 24398.

firearms will be insufficiently safeguarded and lost or stolen, and also makes it harder to determine whether a passenger spotted with a gun in their container or luggage is acting lawfully or is a threat to others. Further, the proposal's exceptions facilitate more avenues of transport for potential illicit trafficking of firearms.

In its NPRM proposing these changes, ATF provides no substantive cost-benefit analysis of the changes' impact. The NPRM merely states that the proposed rule "provides qualitative benefits to the public by providing more flexibility with respect to complying with statutes and existing regulatory standards, but ATF does not have sufficient information to calculate quantifiable savings."<sup>22</sup> ATF then "requests more information from the public regarding the economic effects that this rulemaking may have on the public and the regulated industries."<sup>23</sup> ATF's failure to assess or even attempt to quantify the costs and benefits of this proposed rule or its impact on public safety, the safety of carrier operators and passengers, and the burdens it may place on state and local transit systems is an unacceptable deficiency in this NPRM.

Further, it is notable that ATF points to the fallback safeguard of state and local laws that regulate baggage containing firearms in order to justify the proposed rule's weakening of the section 922(e) notice requirement and the exempting of municipal buses, trains, taxis and rideshares from its coverage. But ATF has not analyzed those state or local laws and determined how they impact the proposed rule's benefits and costs. Also, ATF should be leading the way when it comes to combating firearms trafficking and reducing public safety risks from firearms that are lost or stolen, not relying on states to offset the increased risks created by ATF's own actions. States and localities can and do pass firearm safety laws to build upon the federal baseline laws that ATF enforces, but when ATF proposes regulatory changes that weaken those federal laws, there is no guarantee that states and local jurisdictions will be able to make changes to cover those risks.

#### **IV. Conclusion**

Because the proposed rule contravenes the statutory text of section 922(e) and caselaw applying it, increases risks to public safety, and lacks credible justifications or cost-benefit analyses for its changes, the proposed rule should be withdrawn.

Thank you for your consideration of this comment.

Sincerely,

*/s/ Justin Wagner*

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<sup>22</sup> 91 Fed. Reg. 24398.

<sup>23</sup> *Id.*