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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: Docket No. ATF-2026-0068; RIN 1140-AA89
Comment on Proposed Rule on “Interstate Transport and Temporary Export of
National Firearms Act Firearms”

Docket No. ATF-2026-0133; RIN 1140-AA73
Comment on Proposed Rule on “Clarifying Interstate Transportation of Firearms
Under the Gun Control Act”

To Whom It May Concern:

Everytown for Gun Safety Support Fund¹ (“Everytown”) submits this comment in response to two notices of proposed rulemaking (“NPRMs” or “proposed rules”) issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) that amend regulations governing interstate transportation of firearms under the National Firearms Act (“NFA”) (RIN 1140-AA89) and the Gun Control Act (“GCA”) (RIN 1140-AA73). **These proposed rule changes would remove important safeguards on the interstate transport of guns, including particularly dangerous NFA weapons like machineguns and short-barreled shotguns, depriving law enforcement of important information and undermining state laws that were put in place to protect the public.**

In 2026, ATF has proposed a wave of regulatory changes that would weaken longstanding federal firearms laws in order to expand the making, importation, sale, and possession of firearms. With these two interstate transport NPRMs, ATF seeks to facilitate greater unsupervised movement of firearms across state lines as well. These regulatory proposals appear aimed at providing increased convenience for gun owners and increased profitability for the gun industry, but they would also significantly increase risks to public safety and impose

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.

serious burdens on state and local law enforcement. ATF's NPRMs would allow more dangerous weapons in more places with less oversight, and would enable those transporting guns interstate to circumvent important state laws that were enacted to protect residents from harm.

More broadly, in a country where gun violence touches so many, we are troubled by the extent to which the federal agency – ATF – tasked with solving gun crimes and regulating the gun industry appears to be spending its time and resources focused on how to speed up the interstate travel of the most dangerous weapons in our country. These rules increase dangers to the public and law enforcement and address no actual pressing need.

For the reasons discussed below, we oppose these NPRMs and urge that both proposed rules be withdrawn.

I. ATF's proposal to allow interstate transportation of NFA firearms without ATF's advance approval increases public safety risks and complicates the jobs of state and local law enforcement. (RIN 1140-AA89)

With its NFA NPRM, ATF proposes to eliminate the longstanding requirement that individuals in possession of NFA firearms must get ATF's advance approval before transporting the firearms across state lines. This change would contravene the goals of the NFA, which include carefully monitoring the whereabouts of certain firearms that Congress has determined to be particularly dangerous, building safeguards to ensure that any movement or transfer of such firearms is fully lawful, and making federal, state, and local law enforcement aware of the presence of these weapons in their jurisdictions.

A. The NFA seeks to ensure that the movement and whereabouts of particularly dangerous weapons are carefully monitored.

Since 1934, the NFA has regulated the manufacturing, possession, transfer, and transport of certain weapons that Congress has determined to be particularly dangerous, including machineguns, short-barreled shotguns and rifles, destructive devices, silencers, and other weapons such as firearms disguised as objects like pens, umbrellas, or canes.² Congress enacted the NFA to curtail transactions of weapons that were frequently used in crime, imposing heightened restrictions on weapons that pose significant danger to public safety because of factors such as their lethality, concealability, and ability to make it harder for law enforcement or bystanders to identify from where gunshots originated.³

The NFA requires those seeking to make or transfer NFA weapons to first submit a detailed application to ATF and undergo a background check, and ATF must grant approval before the weapon can be manufactured or transferred.⁴ The law also prohibits any person who is not a federal firearms licensee ("FFL") from transporting in interstate or foreign commerce certain NFA weapons (a machinegun, destructive device, short-barreled shotgun, or short-barreled rifle) unless the Attorney General has authorized the transport as "consistent with

² 26 U.S.C. § 5845(a). Disguised weapons are known under the NFA as "any other weapons." See 26 U.S.C. § 5845(e).

³ See ATF, "[National Firearms Act](#)," viewed on July 3, 2026.

⁴ 26 U.S.C. §§ 5812, 5822; 27 C.F.R. § 479.64, § 479.86.

public safety and necessity.”⁵ The law further requires that all NFA weapons be registered in a central registry called the National Firearms Registration and Transfer Record (“NFRTR”), and prohibits persons from transporting a NFA firearm in interstate commerce if the firearm has not been registered.⁶

ATF and the Justice Department have long recognized the importance of the NFA in protecting communities from gun violence, including in recent public statements. In 2025, the Justice Department pointed out in a court filing that the NFA “was Congress’s first major attempt at regulating firearms in the United States, a legislative effort animated by the emergence of armed crime as a major national problem.”⁷ As the Justice Department explained, “[s]eeking to curtail armed crime, the NFA targeted particularly dangerous and easily concealable weapons that could be used readily and efficiently by criminals.”⁸ The Justice Department further explained that Congress designed the NFA as a remedy to deal with the “serious national emergency” of armed crime, with “armed criminals pass[ing] rapidly from State to State.”⁹ In short, for nine decades, the NFA has imposed requirements to ensure that only known, vetted persons are entrusted with NFA firearms and that the movement of such weapons is carefully monitored.

Current ATF regulations provide that a person may only transport an NFA firearm that is a machinegun, destructive device, or short-barreled rifle or shotgun in interstate or foreign commerce if the ATF Director finds the transportation “is reasonably necessary and is consistent with public safety and applicable state and local law.”¹⁰ All persons seeking to transport the NFA firearm must submit a written request on an ATF Form 5320.20 (“Form 20”) that contains information including a complete description and identification of the weapon, the need for such transportation, the approximate date the transportation is to take place, the present location of the weapon and the place to which it is to be transported, the mode of transportation to be used, and evidence that the transportation or possession of the weapon is not inconsistent with the laws at the destination.¹¹ Only if the ATF Director provides specific authorization is the transport of the NFA weapon allowed, and such authorization does not exempt the transport from any other statutory or regulatory provision relating to firearms.¹²

The requirement for advance ATF approval of the interstate transport of NFA weapons serves important public safety purposes. It helps ensure that NFA weapons are accurately registered in the NFRTR. It enables ATF to confirm that it is lawful under state and local law for the person to transfer the firearm to the destination jurisdiction, as numerous states prohibit or tightly regulate possession of certain NFA firearms. It also enables ATF and partner law

⁵ 18 U.S.C. § 922(a)(4).

⁶ 26 U.S.C. § 5841(a), § 5861(j).

⁷ Department of Justice, [Memorandum in Opposition to Plaintiffs’ Motion for Summary Judgment and In Support of Defendants’ Motion for Summary Judgment](#), *Silencer Shop Foundation v. ATF*, No. 6:25-cv-56-H (N.D. Tex), filed 11/20/25, at p. 2 (internal citations omitted).

⁸ *Id.* at p. 3, internal quotes and citations omitted.

⁹ Department of Justice, [Memorandum in Opposition to Plaintiffs’ Motion for Summary Judgment and in Support of Defendants’ Motion for Summary Judgment](#), *Jensen v. ATF*, No. 2:25-cv-00223-Z (N.D. Tex), filed 12/19/25, at pp. 2-3 (internal citations omitted).

¹⁰ 27 C.F.R. § 478.28(a).

¹¹ *Id.*

¹² 27 C.F.R. § 478.28(b).

enforcement agencies in criminal investigations to be aware of the presence of NFA weapons in the destination jurisdiction. Such awareness of NFA weapons' presence in a jurisdiction has long been considered valuable for law enforcement purposes, as it helps law enforcement officers prepare if they need to interact with the weapon's possessor, e.g., when law enforcement serves a warrant or responds to a domestic violence call.¹³

B. ATF's proposed rule would allow unapproved and unmonitored transporting of NFA weapons across state lines, putting public safety at risk.

ATF's proposed rule would fundamentally weaken the regulatory system governing interstate transport of NFA machineguns, destructive devices, or short-barreled rifles or shotguns (described herein as "NFA firearms"). Each of the changes set forth in the proposed rule would lead to increased movement of NFA firearms across state lines while decreasing law enforcement awareness of such movements, to the detriment of public safety.

1. The proposed rule cuts off law enforcement access to information for the majority of instances of interstate transport of NFA firearms.

First, under the proposed rule, persons transporting NFA firearms across state lines for "short-term purposes" (defined as for 365 days or fewer) would no longer need to submit a Form 20 or receive ATF approval before transporting the firearm. In other words, under the proposed rule, any time a person who owns a machinegun, destructive device, or short-barreled rifle or shotgun wants to take that weapon into another state for any non-prohibited reason, they would not have to notify ATF or receive approval as long they carry their NFA paperwork with them and as long as the weapon does not remain out of state for more than 365 days.

This is a dramatic reversal from the decades-long requirement that ATF be informed about and approve all requests to transport certain NFA firearms out of state, and it would deprive ATF of all of the information provided in the Form 20 for interstate NFA weapon transports of less than one year. ATF estimates that out of 6,770 transports of NFA weapons across state lines per year, approximately 5,310 transports, or 80 percent, are for short-term purposes.¹⁴ Yet under the proposed rule, for each of these transports ATF would not know: (1) when NFA firearm owners are taking their weapon across state lines or bringing the weapon back; (2) the destination where they are taking the weapon; (3) the purpose or need for the transportation; (4) the mode of transport used; and (5) whether the firearm owner has even checked to see whether the NFA firearm is prohibited in the destination jurisdiction (since the owner would no longer need to sign a certification on the Form 20).

Given that NFA firearms are particularly dangerous and pose a threat to public safety

¹³ In addition to the NFA's requirement that written requests to transport NFA firearms include information about the place to which the weapon is to be transported, the NFA's original implementing regulations also required those seeking to transfer an NFA weapon to another person to obtain a certificate from a chief law enforcement officer ("CLEO") in the transferee's jurisdiction granting approval of the transaction. In 2016, this CLEO certification requirement was converted into a notification requirement providing that CLEOs must be notified when an applicant seeks to transfer NFA weapons to someone in the CLEO's jurisdiction. ATF now proposes to eliminate the CLEO notification requirement altogether, which, like the interstate transport NPRM, would deprive law enforcement of information about particularly dangerous weapons in their jurisdiction. See ATF, Notice of Proposed Rulemaking, "Removing CLEO Notification Under the National Firearms Act," 91 Fed. Reg. 24471.

¹⁴ 91 Fed. Reg. 25232.

when they are lost, stolen, or misused, it does not make the public safer for ATF and partner agencies to know less about where, when, why, and how these weapons are being moved. Additionally, the NPRM provides no data or reasoning justifying why the cutoff for “short-term purposes” is arbitrarily set at 365 days, as a one-year time period would reasonably be viewed as allowing far more than “short-term” activities.

ATF claims that NFA firearm owners’ submission of Form 20 is not needed for transports of fewer than 365 days because, in ATF’s view, “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” and that “it is rare that individuals apply to transport affected NFA firearms into states in which the firearm is prohibited.”¹⁵ But this claim ignores the deterrent effect that the required submission of Form 20 has on NFA firearm owners seeking to transport a weapon to a destination where it is prohibited. Form 20 requires applicants to certify that “the transportation or possession of the listed firearm(s) is not inconsistent with the laws at the place of destination, that all such laws will be complied with.”¹⁶ The fact that a Form 20 with such a certification must be submitted for ATF approval prior to transport requires applicants to research the laws of destination jurisdictions and not to apply to transport NFA weapons to jurisdictions where they are prohibited. Eliminating the Form 20 requirement will disincentivize those who own NFA firearms to do such research, while at the same time enabling them to transport their NFA firearms to any out-of-state destination without ATF’s advance approval or awareness and regardless of any limiting laws in the destination. There are numerous states and local jurisdictions that have specific laws prohibiting or strictly regulating machineguns, destructive devices, and/or short-barreled rifles or shotguns, and the proposed rule will remove an important safeguard that helped promote awareness of and compliance with those laws.¹⁷

ATF further claims that “Form 20 has become an unnecessary regulatory hurdle” because, before Form 20 became part of ATF’s eForms in September 2025, ATF was often unable to process Form 20 requests in time for the proposed travel.¹⁸ But ATF acknowledges in the NPRM that Form 20 is now part of eForms, which alleviates this timing challenge.¹⁹ Further, the fact that submission of a Form 20 requires some planning, waiting time, and uncertainty for persons wishing to take NFA firearms across state lines is not a justification for abandoning the Form 20 and approval process altogether for all transports of NFA firearms for less than one year.

The logical response for ATF to address such planning and timing frustrations would be to help inform applicants about the availability of Form 20 on eForms and to encourage applicants to plan ahead and submit their request with adequate time in advance of their planned travel. Indeed, ATF acknowledges in the NPRM that already “a majority of owners of affected NFA firearms who travel with them for exhibitions, shows, contests, and shooting events, tend to

¹⁵ 91 Fed. Reg. 25230.

¹⁶ ATF Form 5320.20, “[Application to Transport Interstate or to Temporarily Export Certain National Firearms Act \(NFA\) Firearms](#).”

¹⁷ See, e.g., CA Penal Code § 32625; 720 ILCS 5/24-1; Iowa Code § 724.1, 724.3; Minn. Stat. 609.67; NY CLS Penal § 265.02 (prohibiting possession of machineguns); CA Penal Code § 33210; 720 ILCS 5/24-1; N.J.S. 2C:39-3(b); R.I. Gen. Laws § 11-47-8(b) (prohibiting possession of short-barreled rifles and shotguns).

¹⁸ 91 Fed. Reg. 25230.

¹⁹ *Id.*

be prepared and make arrangements well in advance.”²⁰ In fact, it is hard to think of a credible justification for a “last-minute” excursion requiring an NFA weapon, and the NPRM provides none. But under the proposed rule, there would no longer be any need for such preparation and diligence by NFA firearm owners prior to short-term transports out of state, as ATF would let them cross state lines with their NFA firearms whenever they want as long as the firearm returns within 365 days.

Additionally, ATF does not explain in the NPRM how the 365 day threshold for transporting NFA firearms across state lines for “short-term purposes” would be monitored or enforced, as there would often be no way to prove when the NFA firearm owner first took the gun out of state in the absence of a submitted Form 20. This could create opportunities for NFA firearm owners to also transport NFA firearms for periods of more than 365 days without complying with the proposed rule’s requirements for transport for “long term purposes.” ATF must explain how the 365 day window for transport for “short term purposes” would be verified and respected.

2. The proposed rule provides automatic authorization for long-term transports of NFA firearms but does not address how to correct situations where authorization was not warranted but the firearm is already in the destination state.

Second, while the proposed rule still requires submission of a Form 20 and ATF approval for persons to transport NFA firearms for “long-term purposes” (defined as more than 365 days) or for permanent relocation, under the proposed rule those NFA firearm owners could begin the transporting before they have actually received approval from ATF so long as they had submitted their notice at least 14 days in advance of the transportation. Under the proposed rule, ATF receipt of notice of the request for long-term or permanent transport would “constitute automatic authorization to transport the firearm unless ATF rescinds it after review.”²¹

ATF acknowledges that under this new system it may end up having to rescind authorization once ATF actually conducts a review of the notice, even if the travel has already begun or been completed. ATF says in those instances “the person would have to stop transporting the firearm” and, if travel has already been completed to the destination, “the requester should immediately contact the ATF field division for guidance.”²² But at that point the NFA firearm would already be in another state, potentially in violation of state or local law. ATF does not discuss what measures it would take to ensure that the firearm is removed from the destination state or what costs or burdens ATF or state or local law enforcement would bear to effect such removal after the transportation has already happened. Those costs may be significant, as firearm retrieval actions can be extremely dangerous and require significant resources and manpower, but the NPRM ignores those costs. Additionally, the NPRM does not discuss whether an NFA firearm owner would, if ATF rescinds authorization after the firearm has been transported, potentially face the burden of potential criminal prosecution under state law for having transported the firearm to a state where it is prohibited. ATF must not proceed with a rulemaking that does not establish a plan for conducting removals in cases where authorization

²⁰ 91 Fed. Reg. 25232.

²¹ 91 Fed. Reg. 25231.

²² *Id.*

has been rescinded and account for the costs and burdens involved.

3. ATF's two interstate transport NPRMs combine to allow those transporting NFA firearms to broadly engage in incidental activities with NFA weapons in tow.

Third, the NPRM proposes to authorize persons who transport NFA firearms to a destination state to pass through jurisdictions that prohibit the weapon, provided the owner complies with requirements in 18 U.S.C. § 926A. Section 926A's requirements currently allow a person to transport a firearm from one lawful place to another, provided that the firearm must be transferred unloaded and not readily accessible in the transporting vehicle. However, as discussed in Part II below, ATF has put forward a proposed rule reinterpreting § 926A, and the two NPRMs combined would mean that those transporting NFA firearms through states in which they are prohibited would be able to engage in far more activities than permitted under the current section 926A statute and regulations. This would expose those NFA firearms to more risk of theft, loss, and potential confrontation and put more people at risk — all while law enforcement in the prohibiting state would be unaware of the prohibited weapons' presence if the transport was for short-term purposes.

Allowing such expanded pass-through transport while at the same time eliminating the Form 20 and approval requirements for short-term out-of-state transport of NFA firearms means that there will be significantly more movement of NFA firearms through states where state or local law disallows those weapons while at the same time leaving ATF blind to those movements. When particularly dangerous weapons like machineguns, destructive devices, and short-barreled rifles and shotguns are involved, there is no discernable public safety benefit to increasing a person's ability to transport weapons across state lines undetected while purposefully taking away law enforcement's visibility into that transport.

C. ATF makes no attempt to assess or quantify the risks that the NPRM poses to public safety.

ATF claims in its NPRM that the current regulatory system for NFA transportation, with its requirements that a Form 20 be submitted and approved before transport, “does little to alleviate risks to public safety.”²³ ATF also claims that its proposed changes “reduce burdens on the public without creating undue risks to public safety.”²⁴ But ATF makes no effort to quantify either the public safety benefits of the current system or the potential risks that the NPRM's changes would create. Nor does ATF's analysis of costs even consider costs of the proposed rule to state and local law enforcement agencies and to public safety in general. ATF cannot opine about the impact of the current system or the proposed rule on public safety without even attempting to measure that impact.

The proposed rule clearly creates certain public safety risks and costs for law enforcement. Under the proposed rule, ATF would no longer have visibility into any of the detailed information currently provided in the Form 20 for 80 percent of instances where an owner transports a machinegun, destructive device, or short-barreled rifle or shotgun across state lines. ATF would no longer be able to share that information with partner law enforcement

²³ *Id.*

²⁴ *Id.*

agencies as part of a criminal investigation, and ATF would no longer be able to assist in determining whether the transport violates state or local law. And the elimination of the requirement for NFA firearm owners to submit a Form 20 with its required certification removes a key incentive for owners to learn the law and a key safeguard deterring owners from bringing NFA firearms into states where they are prohibited.

Further, ATF estimates that approximately 5,310 people transport NFA weapons across state lines for short-term purposes each year, and that 1,460 people transport NFA weapons across state lines for long-term purposes.²⁵ Under the proposed rule, all of these transports could happen without ATF approval granted in advance, and the vast majority of the transports — 5,310 — would happen without ATF giving approval at all or even knowing about the transport. These firearms are particularly dangerous and pose a serious public safety threat if they are stolen, lost, or used in a confrontation, yet the proposed rule would blind law enforcement to information about these firearms' movements.

In addition, the proposed rule would result in more NFA firearms ending up in destination states where they are prohibited under state or local law, either because the owners are no longer required to report their transport via a Form 20 for short-term transport, or because the proposed rule allows owners to bring the firearms through prohibiting states while on the way to destination states. The proposed rule thus undermines those state and local laws as well as law enforcement's ability to know if these particularly dangerous weapons are in their jurisdiction. And under the proposed rule, if ATF retroactively rescinds its automatic authorization for a long-term or permanent relocation of an NFA firearm, there will be costs involved in ensuring that the firearm is removed from the destination jurisdiction. The NPRM engages in no discussion of those costs and whether they would be borne by ATF or shifted onto state or local law enforcement. Presumably, costs would be borne by both.

In short, ATF's proposed rule would make NFA firearm transport across state lines more common, would make ATF and partner law enforcement agencies in criminal investigations less aware, and would make the public less safe.

II. ATF's proposed regulatory reinterpretation of 18 U.S.C. § 926A lacks a sound legal basis, increases public safety risks, and undermines states' ability to protect their citizens. (RIN 1140-AA89)

In its other NPRM involving interstate transport of firearms, ATF proposes to rewrite the regulation implementing 18 U.S.C. § 926A, the statute that allows firearms to be transported for a lawful purpose to a lawful destination notwithstanding any state or local laws as long as the firearm is transported unloaded and as long as neither the firearm nor any ammunition is readily accessible or is directly accessible from the passenger compartment of the transporting vehicle.²⁶ ATF seeks to change section 926A's implementing regulation, 27 C.F.R. § 478.38, so that it extends the statute's allowance for firearm transport to include transport of firearms accessories and ammunition and extends the statute's preemption of state and local laws to cover a range of activities that occur outside the transporting vehicle and incidental to the travel. In doing so, ATF seeks to expansively reinterpret the statute based upon a theory that section 926A confers

²⁵ 91 Fed. Reg. 25232.

²⁶ 18 U.S.C. § 926A.

“incidental powers” that are not enumerated or implied in the statutory text. This reinterpretation of the statute is inconsistent with the plain language of section 926A and with caselaw applying it, and it represents ATF trying to change the statute’s meaning to align with ATF’s apparent policy preference for broader preemption of state and local firearm safety laws.

As discussed below, ATF’s NPRM is both legally deficient and unsound as a matter of policy, especially in light of the increased public safety risks and law enforcement burdens it would create.

A. ATF’s legal argument for the proposed rule is unsupported by statutory text and contrary to caselaw.

As a threshold matter, ATF’s legal analysis for its proposed rule is cursory, speculative, and flawed. Section 926A entitles a person to “transport” a “firearm” under specified conditions. Yet ATF broadly asserts, without citing binding legal authority, that “[t]he power to do an act carries with it incidental powers necessary to the act”²⁷ and that “the power to travel interstate includes incidental acts that are reasonably necessary to facilitate that travel.”²⁸ ATF’s main source for the claim that section 926A should be construed to cover “[a]ctivities incidental to transportation, such as checking baggage with firearms at airports, stopping for fuel and eating, and similar activities” is a deskbook written by longtime National Rifle Association outside counsel Stephen Halbrook.²⁹ At the same time, the NPRM concedes that actual court decisions determining the scope of section 926A, such as the *Revell* and *Ass’n of N.J. Rifle & Pistol Clubs* cases, establish narrower applications.³⁰

But, undeterred by the lack of precedent for its position, ATF sets forth in the NPRM an extensive universe of activities which ATF views as “incidental acts that are reasonably necessary to facilitate” interstate travel and that ATF seeks to incorporate within section 926A’s coverage. None of these activities are referenced in statutory text, which again only covers “transport,” and some of the activities are entirely unrelated to transporting firearms (e.g., “picking up or discharging passengers”).³¹ ATF even stretches its use of this unenumerated “incidental powers” theory to argue that section 926A should preempt state and local laws applying not just to firearms but to ammunition and firearms accessories such as scopes, mounts, lights, slings, and magazines.³²

ATF’s regulatory reinterpretation of section 926A does not pass legal muster. The statute neither provides for nor implies any “incidental powers,” and ATF lacks authority to expand via regulatory interpretation the statute’s preemptive scope to include an expansive range of activities and objects that are not mentioned in the statutory text. ATF appears to acknowledge the novelty and aggressiveness of its attempt to use a theory of unenumerated incidental powers to reinterpret the statute, highlighting the proposed rule’s inclusion of a severability paragraph and arguing that “the full scope of a person’s incidental power to transport firearms, ammunition,

²⁷ 91 Fed. Reg. 24443.

²⁸ 91 Fed. Reg. 24444.

²⁹ 91 Fed. Reg. 24443.

³⁰ 91 Fed. Reg. 24443; *Revell v. Port Auth. of N.Y. & N.J.*, 598 F.3d 128 (3d Cir. 2010); *Ass’n of N.J. Rifle & Pistol Clubs Inc. v. Port Auth. of N.Y. & N.J.*, 730 F.3d 252 (3d Cir. 2013).

³¹ 91 Fed. Reg. 24444.

³² 91 Fed. Reg. 24445.

and accessories in interstate commerce has not been elucidated through judicial review.”³³ ATF also acknowledges that its approach is contrary to the weight of existing caselaw that has considered section 926A’s application, but it pejoratively describes those court decisions as resulting in “an overly narrow and burdensome application of the statute.”³⁴

ATF may hold the view that court cases applying section 926A “create illogical and unintended restrictions on a citizen’s right to transport firearms interstate,” but that does not authorize ATF to completely disregard that binding caselaw and change the statute via regulation.³⁵ If the statute’s terms lead to illogical or unintended restrictions, then it is up to Congress to amend the statute, not for ATF to rewrite it via regulation in accordance with ATF’s policy preferences. ATF’s proposed rule is legally deficient and vulnerable to an Administrative Procedure Act challenge, and it should be withdrawn to avoid one.

B. The proposed rule’s expansion of the activities that a person can engage in while transporting both GCA and NFA firearms interstate, even when such activities contravene state and local laws, is detrimental to public safety.

ATF’s proposed rule seeks to broadly immunize those transporting firearms (and ammunition and accessories) from state and local laws regulating those items not just during the transportation itself but also if the person engages in a host of other activities while in the course of transporting the firearms. The regulation provides a nonexhaustive list of such activities including:

- staying in temporary lodging overnight;
- transiting between modes of transportation;
- stopping for food;
- stopping for fuel;
- stopping for vehicle maintenance;
- stopping for an emergency;
- stopping for medical treatment;
- picking up or discharging passengers;
- moving a firearm at the beginning of a journey from a vehicle to a fixed address; and
- “any other activity incidental to the original transportation.”³⁶

The proposed rule would exempt persons who engage in any of these activities while transporting firearms (or ammunition or accessories) from any state or local law that might regulate such activities, such as state laws that require firearm possessors to obtain a permit or

³³ *Id.*

³⁴ 91 Fed. Reg. 24444.

³⁵ *Id.*

³⁶ Proposed new § 478.38(a), 91 Fed. Reg. 24447.

meet eligibility standards, or laws that prohibit the presence of firearms in certain locations. This raises three significant concerns.

First, the proposed rule does not define any of the incidental activities it seeks to exempt from state and local law, leaving their scope vague. For example, under the proposed rule, there is nothing that limits a person transporting firearms from stopping for food at an establishment that is a bar or otherwise serves alcohol, even if state or local law prohibits or carefully regulates firearms in such establishments.³⁷ Similarly, the proposed rule would authorize “staying in temporary lodging overnight,” but the rule does not limit the stay to one night nor does it require the transport to recommence promptly after the overnight stay, seemingly allowing for multi-night visits or even leisurely vacations. The proposed rule also authorizes “stopping for medical treatment” even if state law prohibits firearms in hospitals or healthcare facilities. The proposed rule’s list of activities further includes a catch-all provision allowing “any other activity incidental to the original transportation,” which would seek to exempt from state law a potentially limitless range of other activities and locations that a person transporting firearms might engage in during a visit through a state. The NPRM does not attempt to carefully confine these activities’ scope or duration, nor does it attempt to explain why Congress would draft a statute that preempts so many unspecified activities and locations from state and local firearm laws without even mentioning such preemption in the statute’s text.

Second, while the proposed rule is advertised by ATF as “clarifying interstate transportation of firearms under the Gun Control Act,” this proposed rule combined with the NFA NRPM discussed earlier in this comment would allow NFA weapons to be transported interstate with all the “incidental powers” and preempted incidental activities this NPRM would derive from section 926A. Specifically, the proposed new 27 C.F.R. § 478.28(c) that the NFA NPRM would create provides that a person transporting a machinegun, destructive device, or short-barreled rifle or shotgun interstate would be allowed to pass through states that prohibit such weapons “provided the individual is transporting the firearm in compliance with 18 U.S.C. 926A.” So, ATF’s NPRM reinterpreting section 926A allows those transporting NFA firearms to engage in all the NPRM’s list of incidental activities during the transportation, even in states that prohibit the firearms altogether within their boundaries. As a result, more machineguns, more destructive devices, and more short-barreled rifles and shotguns would be brought in and out of states that prohibit or carefully regulate them, in contravention of those states’ laws.

Third, exempting persons transporting GCA and/or NFA firearms from such state and local laws would undermine those duly enacted laws and impose potentially significant costs on states and localities which the NPRM has not addressed or even evaluated. If individuals transporting firearms are spending considerable time in a state engaging in activities other than transport — such as dining out, staying overnight, picking up passengers, or obtaining medical treatment while firearms are sitting in the trunk of their vacant cars — it increases the risk that firearms will be inadequately secured and stolen. The presence of these firearms also increases the chances they could be used in a confrontation. State and local law enforcement would also have to account for the security risks this proposed rule would create when persons who are transporting GCA or NFA firearms (even in a locked container) travel by common or contract

³⁷ At least 14 states prohibit guns in bars; *see* Everytown, “Which states prohibit guns in bars?”, at <https://everytownresearch.org/rankings/law/no-guns-in-bars/>.

carrier,³⁸ switch between vehicles or modes of transportation,³⁹ or eat out, stay overnight, or obtain medical treatment in the state.⁴⁰ Furthermore, state and local law enforcement officials may encounter individuals traveling with such firearms who do not have permits under state law, who may not be eligible under state law to possess firearms, or who are transporting firearms prohibited under state law, and would have to be trained on how to respond and protect public safety in such encounters. For example, a law enforcement officer conducting a traffic stop in a state where NFA weapons are prohibited and permits are required may encounter a person transporting a NFA firearm through that state without a permit, and the officer may have no clear way of determining whether the person's possession of the firearm was lawful at the starting point and destination of the travel. This proposed rule would make it more difficult for law enforcement officers to determine when to enforce compliance with state law while also making it more difficult to ascertain when a person's possession or transport of a firearm presents a public safety threat.

ATF concedes that it has not even looked at these state and local costs and burdens, saying in the NPRM that it “recognizes that some states may have more restrictive laws that could be impacted by this rule” and that “ATF does not have sufficient information to assess the scope of state regulation or the costs on states that could be impacted,”⁴¹ despite publishing compendiums of state gun laws on a regular basis.⁴² ATF must not move forward with finalizing any proposed rule that has not fully assessed the state and local costs and burdens it would create.

III. Conclusion

ATF's proposals to weaken the laws governing the interstate transport of firearms provide no discernable benefit for public safety and will likely create significant costs and burdens for state and local jurisdictions — costs which ATF's proposed rules do not even bother to assess.

ATF's proposed rules are particularly troubling in the way that they undermine the National Firearms Act. The NFA is a foundational gun law that has been on the books for nearly a century and has helped reduce gun crime and save lives. But we are seeing a multi-front effort by the Trump Administration to chip away at the NFA's provisions in order to expand the civilian market for these dangerous weapons. This puts public safety at greater risk. With these two proposed rules, ATF would allow the vast majority of interstate transports of NFA firearms to occur without ATF being notified or granting approval, thus depriving law enforcement of important information regarding when, where, why, and how particularly dangerous firearms are moving across state borders. ATF's proposal to apply an “incidental powers” theory and allow those transporting GCA or NFA firearms to engage in activities such as dining, overnight stays, and more without state or local regulation would further undermine both the NFA and state and local laws that seek to safeguard against theft and misuse of such weapons. ATF's proposal to reinterpret 18 U.S.C. § 926A lacks legal merit and provides no clear public safety benefit while creating potentially significant risks and costs.

³⁸ Proposed new § 478.38(b)(2), 91 Fed. Reg. 24448.

³⁹ Proposed new § 478.38(b)(4), 91 Fed. Reg. 24448.

⁴⁰ Proposed new § 478.38(a), 91 Fed. Reg. 24447.

⁴¹ 91 Fed. Reg. 24446.

⁴² See ATF, “State Laws and Published Ordinances - Firearms,” *available at* <https://www.atf.gov/firearms/tools-and-services-firearms-industry/state-laws-and-published-ordinances-firearms>.

For the reasons discussed above and for the sake of public safety, both of ATF's proposed rules to weaken laws governing the interstate transport of firearms must be withdrawn.

Thank you for your consideration of this comment.

Sincerely,

/s/ Justin Wagner

Justin Wagner
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Everytown for Gun Safety Support Fund