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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-2026-0003; RIN 1140-AA95
Comment on Proposed Rule on “Firearm Records Retention Periods”

To Whom It May Concern:

Everytown for Gun Safety Support Fund¹ (“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 amends regulations setting retention periods for records maintained by federal firearms licensees (“FFLs”) and records that ATF’s National Tracing Center (“NTC”) receives when an FFL goes out of business (“OOB records”). ATF’s proposed rule allows FFLs to destroy — and requires ATF to destroy — millions of key firearm acquisition, disposition, and transaction records after a period of 20 or 30 years that currently are required to be preserved because the records are critically important for crime gun tracing.²

We strongly oppose this rule because of the unjustifiable harms it would cause to crime gun investigations and, in turn, to public safety. **ATF’s proposed rule would effectively destroy millions of firearm transaction records that law enforcement agencies rely on to successfully trace crime guns in order to stop violent criminals and combat illicit firearm trafficking, resulting in tens of thousands of criminal investigations per year that would be undermined. In short, the proposed rule will make it harder for law enforcement to solve gun crimes.**

With its proposed changes, ATF is choosing to prioritize what is likely a modest reduction in FFL recordkeeping costs over law enforcement’s vital interest in successfully

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 The NPRM also proposes limited retention periods for records involving private party transfers, voluntary firearm handler checks, multiple sales reports, reports on the theft or loss of firearms, and ATF Forms 4473 for transactions that are initiated but not completed. These changes are discussed below.

tracing as many crime guns as possible in order to generate leads in criminal investigations to stop violent criminals. Director Cekada has made clear that “[f]irearm trace data is a critical investigative tool used to identify trafficking patterns, disrupt criminal networks, and support violent crime investigations.”³ Yet ATF admits that its proposed rule “could delay or hinder federal, state, and local law enforcement efforts to track and stop violent offenders” by allowing FFLs to destroy records that may be needed to trace firearms recovered in crime and by having ATF destroy older OOB records in its possession.⁴

Further, ATF claims that it is proposing to destroy OOB records to “alleviate concerns that ATF might have established or will establish a registry of firearms, firearms owners, or firearms transactions.”⁵ But these concerns are wholly unfounded. As Director Cekada explained to the Senate, “[T]hese records are maintained to support lawful firearm trace requests in criminal investigations and are not organized as a comprehensive registry of firearms or firearm owners.”⁶ For decades, there have been any number of extremists and conspiracy theorists that have advanced far-fetched tales of a secret government registry of firearms. Director Cekada and this NPRM put this conspiratorial thinking ahead of public safety. ATF should not irreversibly destroy records to alleviate baseless concerns.

In this NPRM, ATF does not provide any calculation of how much FFLs currently spend on recordkeeping or how much those costs might be reduced as a result of this proposed rule. In fact, ATF does not even make an effort to quantify those costs, so the potential cost savings of this proposed rule are entirely speculative. But ATF does calculate that tens of thousands of crime gun traces per year that currently are able to be successfully completed would fail if the proposed rule takes effect. And if ATF finalizes this rule, the harm it would cause to crime gun tracing and trafficking investigations would be irreversible, as the records that would be destroyed cannot be recreated if the rule is changed in a future rulemaking process. It is deeply troubling that ATF would pursue rules changes that guarantee concrete and permanent harms to crime gun investigations in exchange for speculative and likely modest cost savings for FFLs.

For the reasons discussed in this comment letter, we urge ATF to rescind this NPRM and preserve existing requirements that these critical records be retained and not destroyed.

I. Crime gun traces and firearm trafficking investigations are important for public safety, and their success relies upon records that would be destroyed under this proposed rule.

Federal law has long required FFLs to maintain certain types of records, including Acquisition and Disposition records (“A&D records”) to record receipts and dispositions of firearms in their inventory and Firearms Transaction Records (“Forms 4473”) to record the disposition of a firearm to an unlicensed person.⁷ These forms require FFLs to record the manufacturer, importer (if applicable), model, serial number, type, and caliber/gauge of the

³ Robert Cekada, Responses to Questions for the Record, S. Comm. on the Judiciary Hearing (Feb. 2026), response to Senator Durbin Question 2c, available at https://www.judiciary.senate.gov/imo/media/doc/3502d997-daa5-f550-7914-e7d18cc5b59b/2026-02-04_QFR-Responses_Cekada.pdf.

⁴ 91 Fed. Reg. 24421.

⁵ 91 Fed. Reg. 24419.

⁶ Robert Cekada, Responses to Questions for the Record, S. Comm. on the Judiciary Hearing (Feb. 2026), response to Senator Cruz Question 1, available at https://www.judiciary.senate.gov/imo/media/doc/3502d997-daa5-f550-7914-e7d18cc5b59b/2026-02-04_QFR-Responses_Cekada.pdf (emphasis added).

⁷ 18 U.S.C. § 923(g)(1)(A).

firearm, as well as information about the transferor/transferee and date of the transfer. Federal law also requires FFLs to maintain these records for time periods prescribed by regulation and to deliver the records to the Attorney General if the FFL discontinues business.⁸ FFLs are very familiar with such recordkeeping as part of routine business operations, and they are given flexibility as to the specific method of maintaining these records, either in hard copy or an electronic format.

As the NPRM notes, “records retained by FFLs allow ATF to trace, by firearm serial number and firearm identifying information, ownership of firearms recovered at or used in crimes, a function particularly important in support of federal, state, and local law enforcement.”⁹ As the ATF website explains:

Firearms tracing begins when a law enforcement agency discovers a firearm at a crime scene and seeks to learn the origin or background of that firearm in order to develop investigative leads. Tracing is a systematic process of tracking the movement of a firearm from its manufacture or from its introduction into U.S. commerce by the importer through the distribution chain (wholesalers and retailers), to identify an unlicensed purchaser. That information can help to link a suspect to a firearm in a criminal investigation and identify potential traffickers. Firearms tracing can detect in-state, interstate and international partners in the sources and types of crime guns.¹⁰

ATF also uses OOB records submitted to ATF and maintained by NTC to respond to crime gun trace requests, and ATF reports that “[o]ut-of-business records are integral in the firearms tracing process.”¹¹ Just because an FFL is no longer in business does not mean that a firearm sold and transferred by that FFL will not later be used in a crime. Law enforcement must be able to trace these firearms, too, regardless of whether the FFL is still in business.

Director Cekada has made clear that firearms tracing is one of our nation’s most important crime gun intelligence tools. He informed the Senate that “ATF’s ability to keep America safe relies heavily on our expertise in developing and utilizing crime gun intelligence tools” such as firearms tracing.¹² He further explained that, with firearms tracing, “ATF can identify shooters and the illegal firearms traffickers and provide our law enforcement partners with the investigative tools necessary to arrest and prosecute violent criminals.”¹³ Director Cekada also informed the Senate that “ATF continues to promote the value of comprehensive firearms tracing via eTrace as a key component of its Crime Gun Intelligence Strategy for reducing violent crime and protecting the public.”¹⁴

⁸ 18 U.S.C. § 923(g)(1)(A); (g)(4).

⁹ 91 Fed. Reg. 24415.

¹⁰ ATF website, “National Tracing Center,” *available at* <https://www.atf.gov/firearms/tools-services-law-enforcement/national-tracing-center>, viewed on June 11, 2026.

¹¹ *Id.*

¹² Robert Cekada, Responses to Questions for the Record, S. Comm. on the Judiciary Hearing (Feb. 2026), response to Senator Durbin Question 7c, *available at* https://www.judiciary.senate.gov/imo/media/doc/3502d997-daa5-f550-7914-e7d18cc5b59b/2026-02-04_QFR-Responses_Cekada.pdf.

¹³ *Id.*

¹⁴ Robert Cekada, Responses to Questions for the Record, S. Comm. on the Judiciary Hearing (Feb. 2026), response to Senator Whitehouse Question 3a, *available at* https://www.judiciary.senate.gov/imo/media/doc/3502d997-daa5-f550-7914-e7d18cc5b59b/2026-02-04_QFR-Responses_Cekada.pdf.

The increasing value of and reliance upon crime gun tracing is reflected in ATF's own data. Between 2017 and 2023, law enforcement agencies submitted 2,959,257 crime guns to ATF for tracing, and of those ATF was able to trace 2,307,686 (approximately 78%) to a known purchaser.¹⁵ Interest among law enforcement agencies in ATF's crime gun tracing services and its eTrace electronic tracing platform also continues to grow, demonstrated by the fact that "[o]verall trace requests for crime guns recovered in the United States increased 52% from 2017 to 2023."¹⁶ Between January 2025 and May 2026, ATF responded to nearly 856,000 crime gun trace requests.¹⁷

Crime gun tracing is only valuable for law enforcement investigation purposes to the extent a trace request finds records of the firearm sale that law enforcement can then use to generate leads in the criminal investigation. Currently, ATF regulations require FFLs to retain all A&D records and Form 4473 records that have been generated since 1969 for an indefinite retention period, so that those records are available to successfully complete firearms traces. ATF also currently maintains all OOB records indefinitely so they can be used in crime gun traces to help advance criminal investigations. In 2023 alone, the most recent data available, 46% (303,752 out of 654,064) of all crime gun traces were completed using OOB records.¹⁸

However, ATF now proposes to change the retention periods for these records, which would allow FFLs to destroy these critical records after a period of either 20 or 30 years. The NPRM would also allow manufacturer and importer FFLs to do the same with disposition records. ATF further proposes to require itself to destroy all OOB records in its possession – with the exception of importer and manufacturer acquisition records – after a period of either 20 or 30 years. As a result, millions of firearms records would be irreversibly destroyed upon this proposed rule taking effect. This will result in more crime gun traces, requested by law enforcement, being unsuccessful.

ATF concedes in the NPRM that these proposed changes would have “potential risks to public safety,” including “the possibility that ATF is unable to complete a small portion of firearm trace requests from federal, state and local law enforcement if they pertain to a firearm sold over 20 (or 30) years ago.”¹⁹ ATF even acknowledges that “[t]hese failed trace requests may include high-profile urgent traces.”²⁰ But the NPRM understates the extent of the harm the proposed rule would cause. ATF calculates that in Fiscal Year 2024, there were 49,920 successful traces that would have ended in failure if this proposed rule had been in effect and records had been destroyed after a 20-year period, and 29,377 successful traces would have ended in failure

¹⁵ ATF, National Firearms Commerce and Trafficking Assessment (NFCTA), Volume IV - Protecting America from Trafficked Firearms: NFCTA Updates, New Analysis, and Policy Recommendations, Part III- Crime Gun Tracing Updates and New Analysis, at pp. 2, 7, available at www.atf.gov/sites/default/files2/nfcta_volume_iv_-_part_iii_0.pdf.

¹⁶ *Id.* at p. 20.

¹⁷ Testimony of Robert Cekada before the Senate Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, May 12, 2026, at p. 2, available at https://www.appropriations.senate.gov/imo/media/doc/cekada_testimony_fy27.pdf.

¹⁸ ATF, NFCTA, Volume IV - Protecting America from Trafficked Firearms: NFCTA Updates, New Analysis, and Policy Recommendations, Part III- Crime Gun Tracing Updates and New Analysis, at p. 1, available at www.atf.gov/sites/default/files2/nfcta_volume_iv_-_part_iii_0.pdf.

¹⁹ 91 Fed. Reg. 24420.

²⁰ *Id.*

if this proposed rule had been in effect with a 30-year retention period.²¹ That means tens of thousands of gun crimes per year would be more likely to go unsolved as a result of this rule. ATF freely admits that the “[t]races that would be unsuccessful as a result of the proposed rule could delay or hinder federal, state, and local law enforcement efforts to track and stop violent offenders.”²² Yet ATF appears willing to sacrifice assisting these tens of thousands of criminal investigations per year in order to pursue its proposed rule.

Worse still, ATF has apparently failed to reach out to key stakeholders — the state, local, tribal, and foreign law enforcement agencies that use ATF’s eTrace capabilities — to incorporate their input on how this rule affects public safety. ATF’s eTrace platform is supposed to be a cooperative endeavor. ATF and every agency that uses eTrace jointly execute a memorandum of understanding delimiting the agency’s terms of use and ATF’s responsibilities. Together, the parties agree to “ensure[] coordination, cooperation and the mutual conduct of enforcement and research activities relative to the eTrace application.”²³ With this NPRM, ATF fails to live up to its end of the bargain.

The impact of this change on crime gun traces may be even more significant than the NPRM describes. According to ATF’s National Firearms Commerce and Trafficking Assessment, 12.9% of all crime guns recovered and traced have a time-to-crime of more than 20 years.²⁴ If that percentage is applied to the total number of crime guns traced between 2017 and 2023, it shows that 473,664 crime guns, or more than 67,000 per year, had records of the first retail sale that were more than 20 years old.²⁵ This indicates that the NPRM’s estimate of the number of crime gun traces that will end up not able to be completed under ATF’s proposed rule because an active FFL has destroyed records after 20 years or because ATF has destroyed OOB records significantly undercounts the proposed rule’s true impact.

Additionally, ATF claims in the NPRM that “[t]he older the firearm, the more likely it has been transferred on the secondary market” and that “the ability to trace crime guns to a purchaser or determine their movement in interstate or foreign commerce decreases with time because licensee records do not cover transfers on the secondary market.”²⁶ But as the time-to-crime statistics above indicate, older firearms are still frequently used in crime, and law enforcement benefits from information about the first retail purchase of a crime gun because it generates leads that law enforcement investigators can follow even if the gun has subsequently moved through

²¹ 91 Fed. Reg. 24421.

²² *Id.*

²³ *See, e.g.*, Memorandum of Understanding Regarding the eTrace Internet Based Firearm Tracing Application, ATF-Tukwila Police Department (2012), at p. 6, available at <https://records.tukwilawa.gov/WebLink/DocView.aspx?id=115147&dbid=1&repo=COT-City&cr=1>.

²⁴ ATF, NFCTA, National Firearms Commerce and Trafficking Assessment, Volume II- Crime Guns, Part III - Crime Guns Recovered and Traced within the United States and its Territories, at p. 23, Fig. IFT-01, available at <https://www.atf.gov/media/15426/download>.

²⁵ ATF, NFCTA, National Firearms Commerce and Trafficking Assessment, Volume II- Crime Guns, Part II - National Tracing Center Overview, at p. 24, Appendix NTC, Table NTC-01, available at <https://www.atf.gov/media/15446/download> (showing total trace requests received with average and median processing time by year from 2000-2021); ATF, NFCTA, Volume IV - Protecting America from Trafficked Firearms: NFCTA Updates, New Analysis, and Policy Recommendations, Part III - Crime Gun Tracing Updates and New Analysis, at p. 1, Table CGT-01, available at https://www.atf.gov/sites/default/files2/nfcta_volume_iv_-_part_iii_0.pdf (showing total trace requests received in 2022 and 2023).

²⁶ 91 Fed. Reg. 24419.

the secondary market. Destroying these records eliminates the possibility of law enforcement following these leads.

Furthermore, the NPRM makes no attempt to reconcile its assertion that older firearms are difficult to trace because they have moved through the secondary market with the fact that ATF has recently moved to prevent effective tracing of a significant portion of secondhand firearms through the “indefinite suspension” of the Demand Letter 2 program, which, since 2000, had required FFLs with a substantial number of short time-to-crime gun traces to report sales of secondhand firearms to ATF to enable tracing of those firearms.²⁷ The Demand Letter 2 Program had been a success, enabling the completion of 190,598 crime gun traces from 2020 through 2021, or 2.5% of all crime gun traces.²⁸ ATF should explain why on the one hand it rationalizes the destruction of older firearms records on the difficulty of tracing secondhand firearms, while on the other hand cutting off an important avenue for tracing secondhand firearms.

II. ATF does not provide adequate justification for destroying these records and compromising the crime gun traces, criminal investigations, and anti-trafficking efforts that rely on them.

The arguments that ATF’s NPRM puts forward in support of the proposed rule do not justify the significant harmful impacts it would have on crime gun tracing, criminal investigations, anti-trafficking efforts, and public safety.

A. ATF did not quantify current record retention costs and how those costs would be affected by the proposed rule.

In explaining its reasons for pushing its proposed rule, ATF says that “the requirement to maintain permanent records of all firearms transactions is not justifiable based on the cost and administrative burden to both the firearms industry and the government.”²⁹ But the NPRM does not meaningfully calculate those costs and burdens, nor does it even try to do so. Instead, recognizing that ATF does not currently have such data, the NPRM puts out a request for comments “on the costs or benefits of the proposed rule and on the appropriate methodology and data for calculating those costs and benefits.”³⁰

ATF does state in its NPRM that since 2022, FFLs “have been facing costs of retaining, on a permanent basis, A&D records for firearms.”³¹ But ATF does not identify or quantify such costs in its NPRM, providing no information on average costs, variations in costs, or differences in costs depending on physical or electronic record maintenance. ATF does not even discuss what components make up the costs FFLs face beyond brief observations that electronic recordkeeping systems “often require a financial investment in computer hardware, software, and training”³² and that “only a de minimis number of FFLs” incurred costs in recent years “for

²⁷ Email from Program Manager, Tracing Operations & Records Mgt. Branch, ATF National Tracing Center Division, to Field Attorneys, ATF - FO - DIO (May 30, 2025 20:05 EST) (on file with Everytown) (email with subject line “Demand 2 Letter Program (Indefinite Suspension)” informing ATF employees that “the Demand 2 Letter Program has been suspended indefinitely).

²⁸ ATF, NFCTA, National Firearms Commerce and Trafficking Assessment, Volume II- Crime Guns, Part II - National Tracing Center Overview, at p. 9, available at <https://www.atf.gov/media/15446/download>.

²⁹ 91 Fed. Reg. 24421.

³⁰ 91 Fed. Reg. 24422.

³¹ 91 Fed. Reg. 24419.

³² 91 Fed. Reg. 24415.

expanding storage facilities or converting to digitized retention or electric records”.³³

In fact, much of the NPRM’s discussion of FFL recordkeeping costs focuses on how FFLs likely would achieve only modest cost savings under the proposed rule. ATF states that “it is likely that large dealers maintain established record-keeping systems capable of complying with the current or proposed regime equally,” indicating not only that current record retention requirements are workable for large dealers but also that those dealers already have systems in place to continue adhering to them.³⁴ And for small FFLs, ATF notes that the Director of the Office of Management and Budget certified “that this proposed rule would not have a significant economic impact on a substantial number of small entities.”³⁵

The NPRM additionally minimizes the significance of older records by pointing out that “only 17 percent of all FFLs have been licensed for 20 years or more.”³⁶ But this statistic is meaningless without any information about whether those 17 percent of longstanding FFLs include a disproportionate number of high-volume dealers. Logically, high-volume dealers would be more successful and therefore more likely to sustain a business for more than two decades. In fact, it is likely that the records from these 17 percent of FFLs are particularly likely to be useful for crime gun tracing. For example, Vance Outdoors in Columbus, Ohio, which was reported to have 2,390 traces between 2006 and 2010, the most of any FFL over that period, is still in business.³⁷ The same goes for the FFL with the second most traces over that same period, Hyatt Coin & Gun in Charlotte, North Carolina.³⁸ Two FFLs that were among the most prominent sources of traced firearms, Arrowhead Pawn & Jewelry, in Jonesboro, Georgia, and Westforth Sports in Gary, Indiana, closed in recent years only after decades in business.³⁹ It is imperative that high-volume dealers that prove to be significant sources of traced firearms maintain their transaction records beyond 20 or 30 years and that those records, when submitted to the out-of-business center, continue to be maintained beyond 20 or 30 years. The NPRM’s failure to examine whether older records from longstanding FFLs are particularly important to tracing is a glaring omission in ATF’s reconsideration of retention periods.

Moreover, the NPRM fails to consider alternatives for preserving records beyond 20 or 30 years while reducing any supposed burden on FFLs. ATF could consider requiring FFLs to submit records older than 20 or 30 years to the OOB center to be digitized and preserved to allow for crime gun tracing. In the past, when FFLs were required by regulation to maintain records for only 20 years, ATF advised FFLs that it “strongly encourages licensees to send to ATF Out of Business Records Center those records greater than 20 years old that they may otherwise destroy.”⁴⁰ ATF recognized at the time that “If these records are discarded, information contained

³³ 91 Fed. Reg. 24419.

³⁴ *Id.*

³⁵ 91 Fed. Reg. 24422.

³⁶ 91 Fed. Reg. 24419.

³⁷ Sari Horwitz & James V. Grimaldi, “U.S. gun dealers with the most firearms traced over the past four years,” *Wash. Post*, Dec. 13, 2010, available at <https://www.washingtonpost.com/wp-dyn/content/article/2010/12/12/AR2010121202667.html?sid=ST2010121203267>.

³⁸ *Id.*

³⁹ Greg Lickenbrock, “Notorious Gun Dealer Arrowhead Pawn to Close,” *The Smoking Gun*, Oct. 31, 2023, available at <https://smokinggun.org/notorious-gun-dealer-arrowhead-pawn-to-close/>.

⁴⁰ ATF, FFL Newsletter (Sept. 2013, Vol. 1), available at <https://web.archive.org/web/20250125163642/https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensees-newsletter-september-2013-volume-1/download>.

in those records will be lost forever and a vital investigative tool will be unavailable for use in law enforcement investigations.”⁴¹

With respect to the cost or burden on government for maintaining OOB records, ATF states in the NPRM that destroying OOB records after 20 or 30 years “would significantly reduce the volume of records retained by ATF,” but ATF does not provide any explanation or data how much ATF would save in costs.⁴² ATF has, however, repeatedly made clear that OOB records provide enormous benefits to ATF’s crime gun tracing efforts, including stating that “OOB records are a critical resource in completing traces for law enforcement.”⁴³ By way of example, the firearm used in the attempted assassination of then-candidate Trump in Butler, Pennsylvania, in July 2024 was traced using OOB records.⁴⁴ And while the NPRM claims that the percentage of OOB traces that use OOB records over 20 years olds has “decreased steadily since 2011,” the actual number of such traces involving 20-year-old OOB records has increased from 41,652 in 2011 to 50,869 in 2025.⁴⁵ The fact that almost 10,000 more cases per year rely on OOB records now compared to 2011 is an important indicator that the value of OOB records to ATF’s law enforcement mission justifies the burden to ATF of maintaining those records.

Because ATF has not measured current recordkeeping costs to industry or government and has not calculated how those costs would be impacted by the proposed rule, ATF is forced to admit that as a result of its proposed rule it “expects a qualitative benefit to accrue to the industry, yet of unknown magnitude and number of beneficiaries.”⁴⁶ Such a speculative and ill-defined benefit does not justify permanently deleting records that would assist in generating leads for tens of thousands of criminal investigations per year. Nor does that hypothetical benefit outweigh the very tangible costs of destroying evidence that could help solve gun crimes for the benefit of the law enforcement agencies, victims, and communities that have suffered from those crimes.

B. ATF has not provided justification for changing its 2022 rule.

In 2022, ATF issued a rulemaking requiring indefinite retention of A&D records, Forms 4473, and OOB records, and ATF’s rule provided an extensive list of sound justifications for doing so. Those justifications have not meaningfully changed since 2022, and ATF’s NPRM does not credibly explain why they should no longer apply.

The current NPRM walks through the history of ATF’s record retention regulations since the Gun Control Act of 1968, showing that from 1969 to 1985 all FFL transaction records were required to be retained indefinitely before a regulation change in 1985 established a 20-year retention period for disposition records that lasted until 2022.⁴⁷ In 2022, ATF reversed that 1985 rulemaking in order to stop the destruction of these records and require FFLs to retain the records

⁴¹ *Id.*

⁴² 91 Fed. Reg. 24419.

⁴³ ATF, NFCTA, Volume IV - Protecting America from Trafficked Firearms: NFCTA Updates, New Analysis, and Policy Recommendations, Part III- Crime Gun Tracing Updates and New Analysis, at p. 1, *available at* www.atf.gov/sites/default/files2/nfcta_volume_iv_-_part_iii_0.pdf.

⁴⁴ Perry Stein, “ATF Traced Trump Rally Shooter’s Gun Using Records Opposed by Some in GOP,” Wash. Post, July 21, 2024, *available at* <https://www.washingtonpost.com/national-security/2024/07/21/tracing-trump-rally-gun-atf-closed-business-records/>.

⁴⁵ 91 Fed. Reg. 22419.

⁴⁶ 91 Fed. Reg. 24420 (emphasis added).

⁴⁷ 91 Fed. Reg. 24414.

in either electronic or paper format until the FFL discontinues business activity, at which point the records must be transferred to ATF as OOB records. ATF explained that this preservation of these records was justified “[g]iven advancements in electronic scanning and storage technology, ATF’s acceptance of electronic recordkeeping, the reduced costs of storing firearm transaction records, the increased durability and longevity of firearms, and the public safety benefits of ensuring that records of active licensees are available for tracing purposes.”⁴⁸ ATF’s 2022 rulemaking also made the following observations:

- “Firearms are generally durable weapons that last many decades, and their lethality and potential use in crime does not diminish over time.”⁴⁹
- “[W]ith the advancement of electronic scanning and storage technology, maintaining old records is not as difficult or costly as it was when ATF first allowed records over 20 years old to be destroyed in its 1985 rulemaking.”⁵⁰
- During the period when ATF regulations allowed FFLs to destroy records after 20 years, ATF found that between 2010 and 2021, there were 16,324 cases (1,360 on average per year) in which traces could not be completed because records had been destroyed by FFLs, including 182 cases involving traces designed at urgent, 1,013 cases involving homicide or attempted homicide, and 4,237 cases involving violent crimes.⁵¹

In its current NPRM, ATF does not rebut or even dispute the justifications ATF cited in 2022. ATF does not argue that electronic scanning and storage technology has somehow become less able to handle record retention now compared to 2022, nor does ATF argue that the reduced costs of storing firearm transaction records that ATF cited in 2022 no longer persist. ATF also notably avoids mentioning in its current NPRM how many trace requests in investigations involving homicides, attempted homicides, or violent crimes are likely to be compromised per year under the proposed rule because of destroyed records. And, of course, ATF does not argue that firearms have become any less durable or any less lethal over time. ATF ignores data showing that even firearms more than 50 years old continue to be recovered and traced by law enforcement in significant numbers — ATF has reported that 65,945 firearms were recovered by law enforcement agencies that could not be traced to a purchaser because those firearms were manufactured before the Gun Control Act of 1968 required manufacturers to engrave serial numbers on every firearm.⁵² What ATF’s NPRM does, however, repeatedly recognize is that the public safety benefits of ensuring that records are available for tracing purposes are still compelling.

Further, even though ATF points out that the number of successful traces completed using records older than 20 or 30 years is a relatively small percentage of the overall number of trace requests, the NPRM shows that the total number of traces involving those older records still represents an enormous number of criminal investigations into recovered crime guns:

⁴⁸ 87 Fed. Reg. 24667.

⁴⁹ 87 Fed. Reg. 24712.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² ATF, NFCTA, National Firearms Commerce and Trafficking Assessment, Volume II- Crime Guns, Part III - Crime Guns Recovered and Traced within the United States and its Territories, at p. 5, *available at* <https://www.atf.gov/media/15426/download>.

approximately 30,000 to 50,000 trace requests per year.⁵³ Also, the NPRM shows that the number of trace requests submitted by law enforcement more than doubled between 2015 and 2024, showing that state and local law enforcement are increasingly relying on crime gun tracing as part of their investigative work.⁵⁴

In short, in its current NPRM, ATF has not provided any information countering the credible reasons that it articulated four years ago for preventing destruction of these critical records.

C. The NPRM discounts the value of older firearms records by cherry-picking data and ignoring firearm production statistics.

The NPRM justifies the destruction of older records largely on the basis that recent years have seen a decrease in the percentage of recovered firearms that were traced using records, including OOB records, over 20 or 30 years old.⁵⁵ In this view, the decreased proportion of older firearms among all recovered firearms indicates that destroying older transaction records “would not have a significant impact on ATF’s capability to trace crime guns.”⁵⁶

The NPRM’s reasoning on this point is deeply flawed. First, a decrease in the proportion of older firearms that are recovered does not equal a decreased need for older records to trace those firearms. Those older records remain valuable to law enforcement investigations, absent such a substantial and sustained decrease in the gross number of recovered firearms traced using those older records. Second, the statistics in the NPRM do not evince a sustained trend into the future that older firearms will continue to make up a lesser proportion of recovered firearms. In fact, contextual production and sales data ignored by the NPRM indicate that older records could have more value for tracing firearms compared to the present.

The NPRM cherry-picks data to support the notion that there is a dramatic decrease in the proportion of older firearms recovered and traced concurrent with an increase in the proportion of recoveries of short time-to-crime firearms. The NPRM notes an increase in short time-to-crime guns from 2017 compared to 2021, including an increase in recovered firearms with a time-to-crime of less than one year from 19.3% in 2017 to 32.3% in 2021.⁵⁷ But the NPRM does not include trace data from 2023, which shows that recovered firearms with a time-to-crime of less than one year had regressed to 20.2% of all recovered firearms in the United States and its territories.⁵⁸ The omission of this statistic evidences a NPRM that is simply trying to back into a justification for its proposed rule. The NPRM erred by leaning so heavily on 2021 trace data in contriving a trend—the high number of less-than-one-year time-to-crime guns in 2021 correlated with an enormous, and temporary, burst in firearm sales in 2020 that continued into 2021. ATF statistics estimated that 38.4 million firearms were sold across 2020

⁵³ 91 Fed. Reg. 24421.

⁵⁴ 91 Fed. Reg. 24420, Table 5.

⁵⁵ 91 Fed. Reg. 24416, 24119.

⁵⁶ 91 Fed. Reg. 24416.

⁵⁷ *Id.*

⁵⁸ Calculated based on data from U.S.-Time-to-Crime - Recovered and Traced - 2023.xlsx, available for download at ATF, Firearms Trace Data Reports, https://www.atf.gov/resource-center/data-statistics/firearms-trace-data-reports?search_api_fulltext=&field_trace_data_location_parents=All&field_trace_data_location_children=All&field_report_end_date=+2023.

and 2021, compared to 28.1 million firearms sold across 2016 and 2017.⁵⁹ The 2020-2021 peak in firearms sales largely accounts for the rise in short time-to-crime guns in 2021. For that rise to continue and become a sustained trend, firearms sales would likewise have to continually rise. But that has not been the case, as sales dipped in 2022.⁶⁰

The supposed trend towards the decreasing importance of older firearms records for tracing is also belied by firearm production statistics that the NPRM fails to take into account. Firearm production increased dramatically in the 10-year-period ending in 2021 compared to the 1990s. In the decade from 1990 through 1999, the total number of firearms manufactured in or imported into the United States was 55.6 million.⁶¹ From 2012 through 2021, that total firearm production figure nearly tripled to 150.6 million.⁶² For older firearm records to continue to make up a continually decreasing proportion of recovered firearms, as the NPRM seems to presume, firearm production would have to continue at this unsustainable pace. In a more likely scenario, this pace will not continue and the decrease in the percentage of traces using 20 or 30-year-old records will reverse itself. 10 or 20 or 30 years from now, older firearms are likely to make up a greater proportion of recovered firearms compared to the present.

Rules for retaining firearms transaction records should be oriented towards the future, ensuring that criminal investigations in 2040 are not hampered by short-sighted, poorly reasoned decision making in 2026. The NPRM fails in that regard.

D. Unfounded concerns about an ATF registry do not justify the proposed rule's destruction of out-of-business records.

ATF has never before issued regulations requiring destruction of the OOB records that it maintains. The Gun Control Act requires FFLs to provide these records to ATF when they discontinue business, and ATF has maintained such records indefinitely so they can be used for crime gun tracing purposes. Now, for the first time, ATF proposes to codify a requirement to destroy OOB records in its possession, apparently to “alleviate concerns that ATF might have established or will establish a registry of firearms, firearms owners, or firearms transactions.”⁶³

This argument is a red herring. As Director Cekada explained to the Senate, “[T]hese records are maintained to support lawful firearm trace requests in criminal investigations and are not organized as a comprehensive registry of firearms or firearm owners.”⁶⁴ ATF has not established such a registry, and ATF would not establish such a registry, because the law prohibits it. Alleviating “concerns” that are not based in fact nor made in good faith is not a justification for undermining actual criminal investigations by permanently deleting records that would have helped successfully complete traces and generate investigative leads. There are any

⁵⁹ ATF, NFCTA, Volume IV - Protecting America from Trafficked Firearms: NFCTA Updates, New Analysis, and Policy Recommendations, Part III- Crime Gun Tracing Updates and New Analysis, at p. 13, *available at* www.atf.gov/sites/default/files2/nfcta_volume_iv_-_part_iii_0.pdf.

⁶⁰ *Id.*

⁶¹ Calculated using statistics reported in ATF, Firearms Commerce in the United States: Annual Statistical Update 2021, *available at* <https://www.atf.gov/media/16741/download>.

⁶² Calculated using statistics reported in ATF, ATF, Firearms Commerce in the United States: Annual Statistical Update 2024, *available at* <https://www.atf.gov/media/22706/download>.

⁶³ 91 Fed. Reg. 24419.

⁶⁴ Robert Cekada, Responses to Questions for the Record, S. Comm. on the Judiciary Hearing (Feb. 2026), response to Senator Cruz Question 1, *available at* https://www.judiciary.senate.gov/imo/media/doc/3502d997-daa5-f550-7914-e7d18cc5b59b/2026-02-04_QFR-Responses_Cekada.pdf (emphasis added).

number of untrue conspiratorial “concerns” floating around our country as it pertains to firearms, and the idea that our nation’s chief regulator of the firearms industry is now listing such untrue conspiracies as a basis for agency action is beyond troubling.

ATF further cites several bills that were recently introduced in Congress and claims that the bills “highlight ongoing concerns with ATF retaining OOB records and trace information.”⁶⁵ But these bills have not been passed into law. The mere introduction of bills in Congress is not a credible basis for agency action. Indeed, to allow the introduction of a bill to have this effect would result in Congress being able to influence agency action with unfounded bills that have minimal support. ATF should not be distracted by messaging bills that have not commanded sufficient support to be formally enacted.

ATF concedes that imposing a destruction deadline for OOB records “may have a cost impact on the public in the form of marginally greater public safety risk.”⁶⁶ But that risk is more than marginal. Destroying OOB records after 20 or 30 years will compromise thousands of criminal investigations per year where ATF is currently supplying investigative leads through traces involving OOB records. ATF must not take this irrevocable step, and particularly not on the basis of unfounded “concerns” that do not have any basis in law or fact.

Furthermore, the NPRM nowhere accounts for the disposition schedule for OOB records established with the National Archives and Records Administration (“NARA”) in accordance with the Federal Records Act (“FRA”). Under the current disposition schedule for imaged OOB records, ATF can destroy the records only “when 50 years old or when no longer needed for agency use, whichever is later.”⁶⁷ By proposing to destroy records ahead of that established schedule, ATF risks violating its record preservation obligations under the Federal Records Act.⁶⁸ Crucially, ATF cannot arbitrarily decide to delete records; it must propose a new disposition schedule to NARA that explains why the records need not be preserved including by describing why the records are not longer needed by ATF or “do not appear to have sufficient administrative, legal, research, or other value to warrant their further preservation.”⁶⁹ In turn, NARA must review the new disposition schedule to decide whether it agrees with the justification for not preserving the records.⁷⁰ ATF has apparently ignored these required safeguards in its heedless move towards destroying records that continue to provide crucial information for use in law enforcement investigations.

E. Allowing destruction of critical records after 30 years would be harmful to crime gun tracing, violent crime reduction, anti-trafficking efforts, and public safety, but allowing destruction after 20 years would be even worse.

Even though ATF has not yet (1) obtained any data about FFLs’ current record retention costs, (2) attempted to quantify the impact the proposed rule would have on those costs, or (3) considered the costs its proposed rule would have on law enforcement, crime victims, and

⁶⁵ 91 Fed. Reg. 24419.

⁶⁶ *Id.*

⁶⁷ National Archives and Records Administration, *Request for Records Disposition Authority from ATF*, No. N1-436-05-05 (approved Sept. 16, 2005), available at https://www.archives.gov/files/records-mgmt/rcs/schedules/departments/departments-of-justice/rg-0436/n1-436-05-005_sf115.pdf.

⁶⁸ See 44 U.S.C. §§ 3303, 3314.

⁶⁹ 44 U.S.C. § 3303.

⁷⁰ 44 U.S.C. § 3303a(a).

communities, ATF appears to have made up its mind to allow these crucial FFL and OOB records to be destroyed and is primarily seeking feedback on whether such records should be destroyed after 20 or 30 years. A 30-year retention period is somewhat less harmful than a 20-year retention period, in that fewer records would be destroyed and fewer crime gun traces would fail. But the NPRM shows that even with a 30-year retention period, there would be 29,377 traces per year that fail because records would be destroyed pursuant to this rule. ATF has provided no credible explanation justifying why it would voluntarily choose to destroy lawful and essential evidence that benefits nearly 30,000 criminal investigations per year.

In sum, ATF has not made the threshold case for altering the status quo under which firearm records are preserved instead of being destroyed. Notably, the costs of such destruction to law enforcement and to the individuals and communities victimized by gun crimes are not even mentioned as a consideration in the NPRM. A credible evaluation of those costs would show that law enforcement, victims of crime, and public safety will be better off by far if the status quo is preserved and if these records are retained so they can be used to help trace more crime guns and solve more crimes.

III. The proposed rule also unnecessarily provides for destruction of Forms 4473 used to document private-party transfers.

While federal law does not require background checks for sales by non-FFLs, many states have imposed that requirement as a matter of state law. Those state laws generally require that the parties to the non-FFL sale use an FFL to conduct the background check. For these transactions, FFLs complete a Form 4473 to document the sale and the background check. This NPRM proposes to allow destruction of Forms 4473 that are used by an FFL to facilitate and document private-party transfers after a 90-day period, a change from the current requirement that these forms be retained in the same manner as all completed Forms 4473. Allowing the destruction of these private-party records will create a new avenue for bad-actor FFLs to hide illegal transactions. During compliance inspections, ATF industry operations investigators (“IOIs”) check FFLs’ Form 4473 records against the NICS audit log⁷¹ to ensure the FFL is not dealing firearms off-book, falsifying records, or fabricating or duplicating NICS transaction numbers. This rule change would allow FFLs to effectively hide illegal transactions by simply saying they were private-party sales unless the IOI happens to conduct their check within the 90-day retention period. ATF should at minimum require such Forms 4473 to be retained for the same five-year period that the proposed rule directs for private-party transfer Forms 4473 that receive a denied response.

ATF also needs to clarify whether FFLs will continue to be required to document private party sales in their A&D records – another crucial requirement to prevent FFLs from being able to hide illegal sales. Previous procedures issued by ATF explicitly described the circumstances under which an FFL conducting a private-party transfer must enter the firearm into their A&D records and when doing so was not required. ATF Procedure 2013-1, ATF Procedure 2017-1, and ATF Procedure 2020-2 each contained clear recordkeeping guidelines, including by instructing FFLs that a private-party transfer that received a “proceed” response from NICS must be logged into the A&D records. This NPRM does not mention whether those longstanding procedures will be superseded. Instead, a separate NPRM revising Form 4473 expressly supersedes those

⁷¹ FBI NICS audit logs are used pursuant to 28 C.F.R. § 25.9 in order to keep track of incoming and outgoing transactions that pass through the NICS system.

procedures⁷² and might be read to prohibit an FFL from entering a firearm in a private-party transfer into the A&D records.⁷³ This NPRM's failure to explain its interaction with the NPRM revising Form 4473 leaves many recordkeeping issues unclear. Most importantly, the NPRM fails to explain whether *any* record of a private-party transfer would continue to exist beyond 90 days if this and the NPRM revising Form 4473 are finalized.

The NPRM cites a dubious "public safety" rationale for allowing the destruction of Forms 4473 used in private-party transfers after 90 days. The NPRM supposes that destroying these records would encourage more voluntary background checks on private-party transfers, but the NPRM's claim is speculative at best. The NPRM posits that private parties are concerned with the privacy interests implicated by longer record retention periods. But the NPRM fails to account for the stronger possibility that a private-party transferor would prefer that Form 4473s be retained for a longer period if the firearm is eventually traced by a law enforcement agency to the private-party transferor who purchased the firearm at first retail sale. In that event, the private-party transferor can refer the law enforcement agency to the FFL which conducted the private-party transfer. If the transaction is recorded on a Form 4473 and the A&D records, the law enforcement agency can continue its tracing investigation through the transferee. This NPRM, together with the NPRM revising Form 4473, would cause that investigative trail to go cold and deprives the private-party transferor of an easy way to show that they disposed of the firearm lawfully.

IV. Conclusion

ATF and Director Cekada have made clear that crime gun tracing is one of the most important crime gun intelligence tools our nation possesses. Crime gun tracing helps generate leads in criminal investigations, identify shooters, solve crimes, combat firearms trafficking, and keep our communities safe from violent criminals. But crime gun tracing only works if firearms records are maintained and available for trace requests.

This proposed rule would lead to the destruction of millions of firearm records, causing an estimated 30,000 to 50,000 crime gun traces per year to fail and undermining criminal investigations across the country. ATF has neither provided data nor arguments that justify the irreversible destruction of millions of records that this proposed rule would cause. In particular, there is no credible justification for ATF to require itself to destroy OOB records, which would undercut thousands of criminal investigations each year by ATF and its law enforcement partners that rely on the records. In this NPRM, ATF has not even bothered to measure how much FFLs or the government currently pay in firearm recordkeeping costs or how those costs would change under this proposed rule. But the NPRM is very clear that the proposed rule's negative impact on law enforcement investigations and the public safety of our communities would be severe.

ATF has done admirable work making crime gun tracing an invaluable resource for solving crimes, combating gun trafficking, and apprehending violent criminals. This proposed rule would directly cause tens of thousands of crime gun traces to fail each year. For the sake of our nation's law enforcement agencies, victims of gun crimes who deserve justice, and the safety of our communities, we urge ATF to withdraw this proposed rule.

⁷² 91 Fed. Reg. 25433 (Revising Firearms Transaction Record, "Form 4473"), superseding ATF Procedure 2020-2.

⁷³ 91 Fed. Reg. 25446 (providing that a "licensee facilitating a background check [in a private-party transfer] may not take the firearm into the licensee's inventory . . .").

Thank you for your consideration of this comment.

Sincerely,

/s/ Justin Wagner

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