EVERYTOWN
FOR GUN SAFETY | SUPPORT FUND

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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-2026-0298; RIN 1140-AA80
Comment on Proposed Rule on "Registering NFA Firearms That Fall Out of Government Contract"

To Whom It May Concern:

Everytown for Gun Safety Support Fund[1] ("Everytown") submits this comment in response to the notice of proposed rulemaking ("NPRM" or "proposed rule") issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") that would allow manufacturers of National Firearm Act ("NFA") firearms to register firearms that were manufactured pursuant to a contract with the United States government ("USG") but that are no longer covered by the USG contract outside of the time period currently permitted for registration. This regulatory change would enable an unknown but potentially large number of additional NFA firearms to be sold in the domestic U.S. market. **Everytown opposes the proposed rule, which represents yet another effort by ATF to weaken the National Firearms Act for the benefit of the firearms industry without conducting reasonable due diligence on the proposed change and without giving meaningful consideration to public safety concerns.** For the reasons discussed below, we urge ATF to withdraw the proposed rule and to stop rolling back gun laws on the books to accommodate the firearm industry's desire to make more profit from sales of dangerous NFA firearms.

1. **ATF in 2026 has repeatedly sought to weaken regulations implementing the National Firearms Act, one of the most important and long-standing gun crime prevention laws on the books.**

Prior to 2026, ATF and the Justice Department regularly acknowledged the importance of

[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.

the National Firearms Act of 1934 in protecting communities from gun violence. 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."[2] 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."[3] The weapons covered by the NFA include machineguns, short-barreled shotguns and rifles, silencers, destructive devices such as rockets, mines, and grenades, and other easily concealed firearms, including those disguised as other objects such as umbrellas, canes, or pens.[4]

As ATF has explained, the NFA's "underlying purpose was to curtail, if not prohibit, transactions in NFA firearms."[5] The NFA's provisions seek to carefully limit and regulate access to these weapons in light of the dangers to public safety that they pose. Among its provisions, the NFA requires those seeking to make or transfer NFA weapons to first submit an application to ATF, which must grant approval before the weapon can be manufactured or transferred.[6] These applications must include detailed identification information about the firearm and the applicant, including the name, address, fingerprints, and photograph of the person seeking to make or possess the NFA weapon, and the person must also pass a background check.[7] The law further requires that all NFA weapons not sold to the U.S. government be registered in a central registry called the National Firearms Registration and Transfer Record ("NFRTR") which includes identification of each weapon and the identification and address of the person possessing the weapon, that the chief law enforcement officer in the applicant's jurisdiction receive a copy of each NFA application, and that a tax be paid for makings and transfers of such weapons.[8] The NFA also requires firearm manufacturers, importers, and dealers seeking to engage in the NFA firearms business to register with ATF and pay an annual special occupational tax ("SOT").[9] In short, for nine decades, federal law has imposed requirements to ensure that only known, vetted persons are entrusted with NFA firearms and that the manufacturing, importation, sale, and movement of such weapons are carefully monitored given the dangers those weapons pose.

Despite ATF's previous recognition of Congress' legislative intent in enacting the NFA and the value of this law for crime prevention, starting on the day of Director Cekada's confirmation in 2026, ATF has put forward proposal after proposal to weaken or eliminate regulatory provisions that carry out the NFA's requirements. These include proposed regulatory changes that would: (1) eliminate the requirement that chief law enforcement officers receive a copy of NFA applications in their jurisdiction;[10] (2) loosen the requirement for ATF approval for

[2] 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).
[3] *Id*. at p. 3, internal quotes and citations omitted.
[4] 26 U.S.C. § 5845(a).
[5] ATF website, "National Firearms Act," viewed on May 21, 2026, *available at* https://www.atf.gov/rules-and-regulations/laws-alcohol-tobacco-firearms-and-explosives/national-firearms-act.
[6] 26 U.S.C. §§ 5812, 5822.
[7] 26 U.S.C. § 5812, § 5822; 27 C.F.R. § 479.63, § 479.64,§ 479.85, § 479.86.
[8] 26 U.S.C. § 5841(a); 27 C.F.R. §§ 479.62, 479.84; 26 U.S.C. §§ 5811, 5821 (tax amounts now range between $0 and $200). In 2025, Congress, on a partisan basis, zeroed out tax amounts for some of these weapons. Pub. L. No. 119-21, 139 STAT. 72 (2025).
[9] 26 U.S.C. §§ 5801, 5802.
[10] 91 Fed. Reg. 24471.

interstate transportation of NFA weapons;[11] (3) weaken NFA marking requirements;[12] (4) reduce safeguards governing transfers of machineguns between licensed manufacturers, importers, and dealers;[13] (5) reduce the number of SOT payments that certain federal firearms licensees currently make;[14] (6) create an exclusion from NFA import requirements for firearms brought into customs bonded warehouses;[15] (7) authorize spouses to file joint applications to make, transfer, or receive NFA firearms as well as to register NFA firearms;[16] and (8) water down fingerprint and photograph submission requirements for NFA applications.[17]

Many of these proposed regulatory changes provide benefits or cost savings only to a limited number of firearm industry participants while creating gaps and loopholes that put public safety at greater risk.[18] Everytown has submitted numerous comment letters urging ATF either not to proceed with such changes or to significantly revise the proposals to strengthen protections for public safety and to minimize the risk that NFA weapons will be used to cause harm in our communities. However, none of these proposals to weaken NFA regulations have been withdrawn. Instead, new proposals just keep coming.

When Director Cekada was being considered for Senate confirmation, he committed in writing that "[u]nder my leadership, ATF will remain committed to implementing and enforcing [the NFA]."[19] So far, that commitment has proved hollow. With this NPRM, ATF — for at least the ninth time since Director Cekada's confirmation — is proposing to significantly weaken regulations implementing the NFA.

2. <u>The proposed rule would change current law to allow more sales of NFA firearms such as machineguns and short-barreled rifles and shotguns in the United States.</u>

This proposed rule would permit manufacturers of any and all types of NFA firearms to avoid compliance with the NFA's registration requirements in situations where the firearms were manufactured pursuant to a USG contract but were not ultimately sold to the USG. Under current law, a manufacturer of an NFA firearm must register the firearm no later than the close of the next business day after they manufacture the firearm unless it was manufactured pursuant to a USG contract.[20] However, under current law NFA firearms that are manufactured pursuant to a USG contract but that "fall out" of contract (i.e., the NFA firearms are rejected, repurposed, or not all are accepted) must be destroyed or exported and may not be sold in the United States because they were not timely registered.

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[11] 91 Fed. Reg. 25229.
[12] 91 Fed. Reg. 24466.
[13] 91 Fed. Reg. 24485.
[14] 91 Fed. Reg. 24478.
[15] 91 Fed. Reg. 25237.
[16] 91 Fed. Reg. 25243.
[17] 91 Fed. Reg. 40924.
[18] Additionally, in August, the Justice Department also declined to seek a stay of a court decision preventing some NFA requirements from being applied to certain NFA weapons for a limited group of plaintiffs. As of this writing, the Justice Department has yet to file an appeal in *Silencer Shop Foundation v. ATF* in the Northern District of Texas.
[19] *See* Robert Cekada, Responses to Questions for the Record, S. Comm. on the Judiciary Hearing (Feb. 2026), responses to Senator Durbin question 5 and Senator Schiff question 8a, *available at* https://www.judiciary.senate.gov/imo/media/doc/3502d997-daa5-f550-7914-e7d18cc5b59b/2026-02-04_QFR-Responses_Cekada.pdf.
[20] 27 C.F.R. § 479.103.

Under the proposed rule, manufacturers of NFA firearms whose firearms fall out of a USG contract would be permitted to register the firearms within 15 days after the firearms fall out of contract and subsequently could sell the firearms domestically instead of exporting or destroying them. This late registration process would apply to all NFA firearms that the manufacturer made for or on behalf of the USG that are either rejected by the USG, repurposed (e.g., the USG wanted the firearms but on a different contract) or that become residuals of the contract (e.g., the manufacturer produced more weapons than the contract specified, such as for testing purposes). The proposed rule would thus make it easier for the firearms industry to profit from the sale of NFA weapons and increase their availability. The potential impact of this proposed rule is significant, yet ATF has failed to take appropriate due diligence in crafting this NPRM.

3. <u>Prior to issuing this NPRM, ATF did not collect or analyze basic data necessary for conducting a credible cost-benefit analysis of the proposed rule</u>.

ATF essentially concedes that it has no idea how many NFA firearms would be affected by this proposed rule change beyond the subset of NFA firearms that are categorized as destructive devices. In the NPRM, ATF admits that it "lacks data on manufacturers of NFA firearms (other than destructive devices) who would be affected by this proposed rule" and asks manufacturers to provide ATF with basic information such as "How often do you, as an NFA manufacturer, or NFA manufacturers collectively, have such NFA firearms that fall out of a USG contract in a given year?"[21] Later in the NPRM, ATF again acknowledges that it "does not have data on the frequency with which manufactured NFA firearms for all types fall out of contract in a year or the costs for disposing them; we have received such data for only some manufacturers of destructive devices."[22] And even the data that ATF obtained regarding manufacturers of destructive devices is minimal; ATF acknowledges that out of 384 federal firearms licensees ("FFLs") licensed to manufacture destructive devices, "ATF does not have data on how many of these FFLs conduct business with the USG or how many have devices fall out of contract each year."[23] To issue such a proposed rule without any semblance of this type of data evidences a lack of any real concern for public safety by the agency. ATF ultimately bases its proposed rule, and the cost-benefit analysis it provides for the proposed rule, merely on "information provided by <u>a few</u> industry members who manufacture destructive devices."[24]

Additionally, while ATF claims the proposed rule is needed for manufacturers to have an alternative to exporting NFA firearms that fall out of USG contract, ATF apparently did not gather even minimal information prior to issuing the proposed rule on how often and how profitably manufacturers have been able to export such firearms. The NPRM concedes that "ATF has no data on whether manufacturers in this situation currently export firearms that have fallen out of USG contract, to what extent the rejected firearms consist of firearms permitted for export, how frequently this occurs, whether the manufacturers are able to make a profit beyond their exporting costs, or whether the net return is more than the costs for destroying these firearms."[25] ATF has failed to demonstrate that exports are not already an adequate and cost-effective means

[21] 91 Fed. Reg. 40947.
[22] 91 Fed. Reg. 40949.
[23] *Id*.
[24] *Id*. (emphasis added).
[25] *Id*.

for manufacturers to responsibly dispose of NFA firearms that fall out of USG contract. Further, ATF has failed to even address whether the manufacturers might already be paid by the USG for the firearms that the proposed rule makes eligible for the late registration process and resale. For example, the proposed rule applies to "residual" firearms which may have been manufactured pursuant to the contract for testing purposes with their cost incorporated into the contract terms. In such instances, allowing residual NFA firearms to be subsequently registered and sold domestically would amount to the manufacturer being paid twice for the firearms.

ATF's failure to perform reasonable data collection and analysis prior to issuing this proposed rule is inexplicable and indefensible. While the rulemaking process allows for agencies to seek information through public comments to help refine regulatory proposals, ATF repeatedly admits in this NPRM that it does not have basic data that is necessary for a credible cost-benefit analysis of the proposed rule, nor did ATF even try to obtain such data. In a responsible rulemaking process, such data should have been acquired before drafting and issuing an NPRM so that the agency can make an informed selection among various regulatory alternatives and in order for the proposed rule to be crafted in a way that minimizes costs and harmful impacts. Yet ATF has done minimal due diligence in advance of issuing this proposed rule, instead using the NPRM to issue a call to gather such information in the first instance. ATF even admits that it has not collected data sufficient to analyze the status quo under current law, stating that "because of data limitations" it did not calculate the costs and benefits of maintaining the status quo.[26] This lack of due diligence would be almost comical if the public safety stakes of an ill-conceived rule were not so serious.

ATF also notes in the NPRM that manufacturers whose firearms fell out of USG contract in the past have received variances from ATF allowing for late registration.[27] ATF states that it "believes that there is no impediment to converting the existing variance option for manufacturers into the regulation, thereby making the registration relief clearer for licensees."[28] However, ATF provides no data on how many variances were requested and approved in the past (even though ATF has that information readily available) and does not explain why the variance process has proved inadequate to address situations where NFA firearms have fallen out of contract. If only a few manufacturers of destructive devices have sought such variances and if ATF already has a process in place to handle such requests, then there is no clear justification for making a sweeping regulatory change that potentially would allow significantly more NFA firearms to flood the domestic market.

Perhaps the most extreme aspect of the proposed rule is that it proposes to change current law for all types of NFA firearms and allow increased domestic sales of all those weapon types, even though ATF has gathered no data on any NFA firearm type other than destructive devices. ATF did not bother to assess, prior to issuing this rulemaking, how many additional NFA firearms such as machineguns, short-barreled rifles or shotguns, silencers, or firearms disguised as objects such as canes or umbrellas would foreseeably be sold into the U.S. domestic market as a result of this rule and who they would be sold to. ATF simply considered what "a few" destructive device manufacturers said about the rule's potential impact on those devices (e.g., grenades, mines, and rockets), and from that information decided to issue a sweeping proposed

[26] 91 Fed. Reg. 49050.
[27] 91 Fed. Reg. 49046.
[28] 91 Fed. Reg. 49048.

rule facilitating the increased proliferation and sale of all NFA firearm types that may have been originally manufactured pursuant to USG contracts (e.g., machineguns, short-barreled rifles and shotguns, silencers, and other firearms that Congress had made subject to the NFA's stringent requirements because of the dangers the weapons posed in civilian hands). ATF acknowledges that "the secondary market for other firearms might be broader than the one for destructive devices," yet ATF conducted no analysis of the ways in which the proposed rule's effect on destructive device availability might be different from its impact on other NFA firearms.[29] In short, ATF has provided zero data or analysis that justifies including types of NFA firearms other than destructive devices in the coverage of its proposed rule, or of the risks of including such other firearm types. It would be foolhardy and potentially dangerous to public safety for ATF to finalize a rule that includes those other NFA firearms given this lack of data and analysis.

4. **ATF's cost-benefit analysis for the proposed rule is unacceptably flawed in that it provides grossly inadequate consideration of public safety concerns.**

In order to promote sensible rulemaking, Executive Order 12866 requires agencies proposing significant regulatory actions to conduct cost-benefit analyses that make credible efforts to quantify costs and benefits to the extent feasible and then to pursue regulatory approaches that maximize benefits while minimizing costs.[30] Similarly, Executive Order 13563 emphasizes the importance of agencies quantifying costs and benefits and reducing costs.[31] ATF notes that the Office of Management and Budget has determined that this proposed rule would be a "significant regulatory action" under Executive Order 12866[32] and thus says that the ATF provides in the NPRM "its normal regulatory cost-benefit analysis to comply with Executive Orders 12866 and 13563."[33]

However, in this NPRM as well as in numerous other recent proposed rulemakings, ATF's so-called "normal" regulatory cost-benefit analysis has treated the proposed rule's impact on the firearms industry as the primary consideration and has treated public safety impact and costs as an afterthought at best.[34] ATF states in this NPRM that it "agrees with licensees that permitting manufacturers to register USG NFA firearms late if they fall out of contract would be beneficial to industry and would not present a public safety risk."[35] But ATF has not assessed the public safety risk associated with increased domestic sales of NFA firearms, nor has ATF even done the basic data gathering or analysis to know how many such firearms and firearm types would be affected by the proposed rule. ATF simply takes the self-interested assertion of the industry that would benefit from the proposal at face value.

In the NPRM, ATF asserts, despite its many prior statements recognizing the potential

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[29] 91 Fed. Reg. 49050.
[30] Executive Order 12866, Sept. 30, 1993, *available at* https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf.
[31] Executive Order 13563, January 18, 2011, *available at* https://www.govinfo.gov/content/pkg/FR-2011-01-21/pdf/2011-1385.pdf.
[32] 91 Fed. Reg. 40947.
[33] *Id*.
[34] This is not the first time in 2026 that ATF has proposed sweeping changes to firearms laws without adequately assessing public safety costs and risks; indeed, it is becoming a troubling pattern. *See, e.g.,* The Smoking Gun, "Critical Flaws Undercut the ATF's Recent Rule Changes," Aug. 7, 2026, *available at* https://smokinggun.org/critical-flaws-undercut-the-atfs-recent-rule-changes/.
[35] 91 Fed. Reg. 40948.

dangers of NFA weapons and their proliferation,[36] that "ATF does not consider it a risk to the public if more registered devices move in commerce, particularly as most NFA firearms and destructive devices manufactured for the USG would not be eligible to enter the non-government market."[37] First of all, ATF should clarify what it means by this statement that it does not consider it a risk to the public if more NFA-registered firearms move in commerce. As the Justice Department has acknowledged, the NFA "targeted particularly dangerous and easily concealable weapons that could be used readily and efficiently by criminals."[38] Especially considering the many ways that ATF is currently proposing to weaken the implementing regulations that govern how NFA firearms move in commerce, it is astonishing that ATF would state or imply that it sees no public safety risk from putting more NFA weapons in commerce. Such a statement stands in stark contrast to Congress' intent and purpose in establishing the NFA, and ATF must either explain its basis for this claim or correct it.

Second, ATF's statement that "most" NFA firearms would not be eligible to enter the non-government market is not reassuring because "most" is not "all," and ATF has done no data collection or analysis to determine how many NFA firearms of each type would in fact be eligible to enter the non-government domestic market and what the increased availability of such weapons would mean for public safety. What percentage of NFA firearms does ATF believe would be sold to non-government domestic buyers? What types of firearms would be sold domestically to non-government buyers and how many of each type? ATF does not say, and apparently has not considered these questions or their public safety impact.

Instead, in an apparent effort to provide reassurance that increased domestic proliferation of NFA weapons will not increase public safety risks, ATF claims that "[h]istorcially, as reflected in ATF crime gun data, registered NFA firearms are not commonly used to commit crimes."[39] But this reliance on historical data has an obvious flaw in that it overlooks the multiple ways in which ATF in 2026 has proposed to weaken the NFA's requirements, as well as the fact that as of this writing, the Justice Department has not yet filed an appeal of a court decision preventing some NFA requirements from being applied at all to certain NFA weapons for a group of plaintiffs.[40] A credible cost-benefit analysis would certainly factor in such proposed regulatory changes and recent legal developments and would also consider ways to revise this proposed rule to reduce the foreseeable risks of increased domestic proliferation of NFA weapons in a weaker regulatory environment. But ATF's cost-benefit analysis does none of that; it merely attempts to quantify costs and benefits that the proposed rule would create for the firearms industry.

As a result of ATF's failure to give public safety considerations due attention, ATF does not even discuss commonsense regulatory alternatives, such as educating defense contractors who manufacture destructive devices about the existing variance option, not including types of NFA firearms for which ATF has no data regarding their manufacture under USG contacts within the coverage of this proposed rule, or only allowing NFA firearms subject to this rule to be sold domestically to state or local governments or law enforcement agencies and not to civilians. Instead, ATF's primary focus in this rulemaking appears to be accommodating as robustly as

[36] *See* Section 1 above.
[37] 91 Fed. Reg. 40949.
[38] *Supra* note 3.
[39] 91 Fed. Reg. 40949.
[40] *Supra* note 18.

possible the request made by manufacturers (particularly those of destructive devices) for ATF to allow them to register NFA firearms that fall out of USG contract so they can be sold domestically to avoid potential loss of revenue.[41] ATF's cost-benefit analysis gives unacceptably short shrift to public safety considerations, and thus cannot serve to demonstrate that the benefits of ATF's proposed rule outweigh its foreseeable risks and costs.

5. Conclusion

During his confirmation process, Director Cekada said that "ATF's mission is to protect Americans from violent crime, specifically gun crime."[42] Yet in this proposed rulemaking and in numerous others announced since his confirmation, ATF has seemed more focused on helping the firearm industry achieve greater profitability than on ensuring that public safety is protected from gun crime. ATF must recommit itself to its primary mission of protecting Americans from gun crime rather than promoting the interests of the gun industry.

Director Cekada also said during his confirmation process that under his leadership ATF would be committed to enforcing and implementing the NFA.[43] But, in the few months since his confirmation, there have been repeated efforts by ATF to water down the regulations implementing the NFA, including this proposed rule. ATF should prioritize enforcing the NFA and other gun laws on the books rather than weakening them for the industry's financial benefit.

In short, ATF has not done the due diligence necessary to demonstrate that this proposed rule's benefits outweigh its foreseeable risks and costs, nor has ATF done the due diligence necessary to fully understand what the scope and impact of its proposed rule would be. ATF also provides no explanation or justification why its proposed rule covers all NFA firearm types when ATF does not have data regarding the rule's impact on any NFA firearm type except destructive devices, nor does ATF explain why it has not considered the option of only allowing firearms subject to the rule to be domestically sold to other government agencies instead of to the general public. For all of these reasons, ATF should withdraw this proposed rule.

Thank you for your consideration of this comment.

Sincerely,

/s/ Justin Wagner

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

[41] 91 Fed. Reg. 40949.
[42] *See* Robert Cekada, Responses to Questions for the Record, S. Comm. on the Judiciary Hearing (Feb. 2026), response to Senator Durbin question 13d, *available at* https://www.judiciary.senate.gov/imo/media/doc/3502d997-daa5-f550-7914-e7d18cc5b59b/2026-02-04_QFR-Responses_Cekada.pdf.
[43] *Supra* note 19.