GUN OWNERS OF AMERICA
THE ONLY NO-COMPROMISE GUN LOBBY IN WASHINGTON

# RE: Revising Non-Over-the-Counter Firearms Transaction Requirements

ADDRESSED TO

**Office of Regulatory Affairs**
Bureau of Alcohol, Tobacco, Firearms and Explosives
U.S. Department of Justice
Washington, DC 20226

SUBMITTED BY

Gun Owners of America
Gun Owners Foundation

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Re: Revising Non-Over-the-Counter Firearms Transaction Requirements, RIN 1140–AB05, 91 Fed. Reg. 25216 (May 8, 2026).
Submitted by Gun Owners of America & Gun Owners Foundation.

# GOA & GOF COMMENTS TO ATF ON THE NOTC SALES NPRM

GOA FEDERAL AFFAIRS | FORMAL COMMENTS ON RIN 1140–AB05 · 91 FED. REG. 25216 (MAY 8, 2026)

**Re:** *Revising Non-Over-the-Counter Firearms Transaction Requirements (RIN 1140–AB05)*

## DOJ RULEMAKING

On May 8, 2026, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") published a notice of proposed rulemaking to "provide greater flexibility for individuals lawfully purchasing firearms" by allowing Federal Firearms Licensees ("FFLs") to conduct a broader range of non-over-the-counter ("NOTC") sales. 91 Fed. Reg. 25216, 25216 (May 8, 2026) ("NPRM").[1] Specifically, the NPRM proposes to "remove restrictions limiting this option to background check-exempt transfers. The proposed rule would permit FFLs to conduct NOTC transfers while complying with background check requirements and adds remote identity proofing and electronic notices to chief law enforcement officers." *Id.* The NPRM seeks public comment by August 6, 2026 on "the clarity of this proposed rule and how it may be made easier to understand," as well as "the costs or benefits of the proposed rule and on the appropriate methodology and data for calculating those costs and benefits." *Id.* at 25227.

## IDENTITY OF COMMENTERS

**Gun Owners of America, Inc. ("GOA")** is a California non-stock corporation headquartered in Springfield, Virginia. Organized as a nonprofit membership organization under Section 501(c)(4) of the Internal Revenue Code, GOA was founded in 1976 with the mission to preserve, protect, and defend the Second Amendment rights of gun owners. Today, GOA represents the interests of more than two million members and supporters nationwide, and routinely lobbies and litigates to vindicate the right to keep and bear arms throughout the country.

**Gun Owners Foundation ("GOF")** is a Virginia non-stock corporation headquartered in Springfield, Virginia. GOF is a nonprofit legal defense and educational foundation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Supported by a national donor base, GOF provides essential legal services and educational resources to the firearms community. Its activities include strategic litigation and administrative advocacy, including the submission of comments such as these intended to safeguard the enumerated right of the people to keep and bear arms.

GOA and GOF have a direct interest in this rulemaking, which will affect not only their individual members and supporters, but also thousands of firearm manufacturers and dealers that are industry members of GOA's Caliber Club program. GOA and GOF's members and supporters overwhelmingly support eliminating restrictions on the right to keep and bear arms while also safeguarding gun owners' personal privacy. Thus, GOA and GOF submit these comments to ensure that ATF's regulation complies with statutory text and protects gun owners from future abuse.

1. *See* https://www.govinfo.gov/content/pkg/FR-2026-05-08/pdf/2026-09157.pdf.

## SUMMARY OF COMMENTS

Expanding NOTC sales to track the statutory text is an admirable goal – and the NPRM accomplishes that end. That said, the NPRM goes further, and its other parts fail to comport with the statute. The NPRM's onerous system of identity verification exceeds statutory requirements, creates security risks for gun owners' data, and makes little sense in light of the relative ease with which gun owners may purchase other types of firearms. ATF should follow through with its goal of supporting NOTC sales, but not at the cost of statutory fidelity and personal privacy.

## COMMENTS ON PROPOSED RULE

### 1. Existing ATF Regulations Conflict with the Statutory Text, and the NPRM Correctly Sets Out to Align Regulation with Statute.

As the NPRM explains, 18 U.S.C. § 922(c)(1) permits the sale of "a firearm to a person who does not appear in person" – what ATF calls an NOTC sale – unless "otherwise prohibited by this chapter." NPRM at 25217. And, as the NPRM acknowledges, no provision of the Gun Control Act ("GCA") "otherwise prohibit[s]" NOTC sales for GCA firearms. Instead, it is only ATF's current regulation, found in 27 C.F.R. § 478.96, which prohibits NOTC sales when the sale is subject to Section 478.102(a). Section 478.102(a), in turn, is the regulation that implements the background-check requirements of 18 U.S.C. § 922(t)(3).

In plain English, this means that *ATF regulations currently prohibit NOTC sales for all ordinary firearm purchases*, in contrast with the statute, which expressly anticipates them. In fact, at present, only sales (i) to a person with a Brady alternate permit (Section 922(t)(3)(A)) or (ii) transfers of National Firearms Act ("NFA") firearms (Section 922(t)(3)(B)) can occur through NOTC means.

The NPRM is therefore correct to amend this state of affairs. By limiting NOTC sales for nearly all firearm transfers, ATF's existing regulation (Section 478.96) conflicts with the statutory text, which clearly intended to allow NOTC transfers. As the NPRM itself acknowledges, the restrictions found in Section 478.96 are found nowhere in the statute, which "does not contain any provisions limiting such NOTC transfers only to NICS-exempt transfers, nor has it ever contained any such provisions." NPRM at 25217. To the contrary, prior to enactment of the GCA in 1968, mail-order sales of firearms were commonplace, and Congress clearly intended them to continue under a NICS regime. Yet contrary to the plain text and intent, Section 478.96 throttles NOTC sales to a trickle. Because the GCA, along with the Brady Act's promulgation of the National Instant Criminal Background Check System in 1993, were not intended to hamper lawful commerce in firearms,[2] the NPRM is correct to move to a system that allows maximal NOTC sales to occur.

### 2. The NPRM Purports to Adopt IAL2, but IAL1 Is All the GCA Allows.

As the NPRM explains, "since the Brady Act and its requirements were enacted in 1993, there have been massive technological changes that make it possible for entities to verify both an identity document and a particular person's identity remotely." NPRM at 25218. Thus, as ATF explains, "[t]he Department of Commerce, National Institute of Standards and Technology ('NIST') provides government and other organizations with technical requirements and recommendations for establishing, maintaining, and authenticating identity for persons who access digital systems over a network." *Id.* The NPRM then describes three NIST "identity assurance levels," or "IALs," and three NIST "authentication assurance

**2.** *See* Pub. L. No. 90-618, 82 Stat. 1213, 1213 ("it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens").

levels," or "AALs." *Id.* at 25218-19. Noting that the NHTSA, the SBA, and the IRS all use "IAL2," the NPRM asserts that "ATF believes that the IAL2 remote identity proofing level … is an acceptable security and assurance standard…." NPRM at 25219. The NPRM then describes the sort of identity documents required for IAL2 as "one piece of 'fair' identity evidence and one piece of 'strong' identity evidence, two pieces of 'strong' evidence, [such as a driver's license,] or one piece of 'superior' identity evidence." *Id.* All of these identification documents are then verified by a "credential service provider," or "CSP." *Id.* at 25218.

But the statutory text does not permit ATF to go nearly this far with respect to NOTC sales. Consider the proposed regulation, Section 478.96, contained in the NPRM, which provides the process for "NOTC transactions for NICS background check transfers." NPRM at 25228. First, the buyer "[s]ubmits [a] Form 4473," together with "a true copy of a valid photo identification document…." *Id.* Second, "licensees must, prior to every transfer, conduct a video conference with the transferee," during which the "licensees must inspect the transferee's actual photo identification document and compare it with the transferee's appearance…." *Id.* So far, so good – this is precisely what the statute describes occurring. *See* 18 U.S.C. § 922(t)(1)(D) (requiring that, prior to transfer, "the transferor has verified the identity of the transferee by examining a valid identification document … of the transferee containing a photograph of the transferee").

But the NPRM then goes further, adopting additional onerous requirements that depart from the statutory text. For example, even after the licensee has verified the identity of the transferee, the NPRM requires that "[l]icensees must then ensure the transferee verifies their identity through a credential service provider (CSP) using a remote identity verification process." NPRM at 25228. As the NPRM describes, this process "requires a CSP to validate the transferee's photo identification document and bind the document to the person who appears for remote identity proofing." *Id.* But the statute does not allow this. Rather, the statute provides quite clearly that it is "***the transferor*** [who] verifie[s] the identity of the transferee" – not a third-party "CSP." 18 U.S.C. § 922(t)(1)(D) (emphasis added). And under the NPRM (Sections 478.96(c)(2)-(3)), the transferor already has done that. ATF has no authority to require that someone *other than* or *in addition to* the transferor verify the transferee's identity.

Worse still, the NPRM then requires an additional step in the process, demanding that "an independent third party must assess the CSP's remote identity proofing process" to ensure that it complies with IAL2 and AAL2. NPRM at 25228. This CSP process, in turn, requires IAL2 document standards which, as discussed above, could include more than one form of "strong" identification. *Id.* at 25219. And the CSP's "binding process" – linking an identification to a live person – "must employ a live physical facial comparison by a CSP representative, or an automated biometrical facial comparison (*e.g.*, 'selfie' verification), using a live capture of the transferee's facial image and liveness detection." *Id.* at 25228.

Once again, all of this is in excess of what the statutory text permits. The statute provides precisely *who* must verify a transferee's identity – "the transferor." Not a CSP, not "an independent third party," and not a computer program through "automated biometrical facial comparison." Likewise, the statute provides precisely *how* identification is verified – by comparing the physical person to "*a* valid identification *document*" – not *multiple* "strong" documents, as IAL2 requires.

No doubt, ATF believes that the NPRM's demands for identification and verification to be necessary in order to accurately verify the identity of a transferee. But "[w]here Congress has established a clear line, the agency cannot go beyond it…" *City of Arlington v. FCC*, 569 U.S. 290, 307 (2013). Indeed, the NPRM touts that "[t]he standards meeting an IAL2 verification level and AAL2 authentication level for

NOTC transactions would *more reliably verify a person's identity than the current procedures* for over-the-counter sales, which rely solely on a visual inspection of customer-presented documents." NPRM at 25219. But while the NPRM might contain "reliable" methods for identity verification, they are not the methods that Congress enacted into law. Rather, ATF's claim that the NPRM adopts standards *better* than Congress enacted in fact constitutes *a confession* that the NPRM exceeds the statutory text. *See Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 327 (2014) (agency "cannot change the law."); *see also Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018) ("Congress alone has the institutional competence, democratic legitimacy, and (most importantly) constitutional authority to revise statutes in light of new social problems and preferences.").

ATF should promulgate the NPRM into a final rule that deletes everything after the second sentence of proposed Section 478.96(c)(3). Any additional, atextual requirements – involving additional third parties, additional processes, and requiring additional identification documents – is a matter for Congress to address, in a statute that has not been updated in decades. But ATF is not free to modernize the statute through the regulatory process.

## 3. The NPRM Fails to Consider Risks to Data Privacy and Produces Absurd Results.

Notably absent from the NPRM's text is any analysis of the privacy risks associated with the third-party collection of gun owners' identification documents and "biometrical facial" data. NPRM at 25228. For instance, the NPRM does not address CSP retention of this sensitive information, or the prospect of subsequent government access. That is deeply concerning. Under the IAL2 standard, CSPs are *not required* to delete identity data on any particular timeframe. Rather, they are required only to adopt a "policy for the retention, protection, and deletion of all personal, sensitive, and biometric data, including the treatment of all such data if the CSP ceases operation or merges or transfers operations to another CSP."[3] That is cold comfort for gun owners, and they should not be required to create a permanent digital identity profile as a condition to exercise an enumerated right. In fact, if a "CSP," other "third party," or anyone else working at ATF's behest were to keep records tying particular identity documents to particular firearms – and storing it in a centralized registry – such a system would risk ATF creating a prohibited gun registry in violation of both 18 U.S.C. § 926(a)(3) and federal appropriation restrictions. These self-evident privacy and security concerns – concerns that ATF's NPRM fail to consider – provide additional reasons for eliminating the extra-statutory identification requirements discussed above.

Finally, adoption of the NPRM as written would lead to absurd results. Currently, ordinary Americans are free to have shipped to their doors military surplus rifles, such as the M1 Garand, through the Civilian Marksmanship Program ("CMP"),[4] and even strictly regulated NFA firearms, such as short-barreled rifles and silencers – all with *less* required identity verification than the NPRM proposes for GCA firearms.[5] Indeed, in the case of CMP rifles and NFA firearms, no live identity confirmation is required – in fact, no electronic communication is required at all. Rather, Americans traditionally have been able to apply for either type of firearm entirely *on paper* via the U.S. mail. Although Commenters support abolishing *all* federal gun control, it seems odd that onerous regimes like the NFA are still *less onerous* than the identity-verification regime proposed in the NPRM. The NPRM provides no justification for imposing greater restrictions to buy a single-shot .22 under the GCA than to acquire a short-barreled AR-15 and silencer under the NFA.

**3.** https://pages.nist.gov/800-63-4/sp800-63a/ial-general/.

**4.** *See* 36 U.S.C. § 40733.

**5.** *See, e.g.*, https://palmettostatearmory.com/blog/new-psa-factory-built-sbrs-.html; https://palmettostatearmory.com/how-to-buy-a-suppressor-online.html.

## CONCLUSION

There is much to like about ATF's recent deregulatory efforts, but this NPRM is a mixed bag. To be sure, ATF should expand NOTC sales. But it should do so in conformity with the statutory text. At present, the NPRM's proposed system of identity verification grossly exceeds ATF's statutory authority, inadequately protects gun owners' privacy, and produces absurd results. Any final rule promulgated based on this NPRM should adequately respond to the concerns above.

Respectfully submitted,

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