Gun Owners of America

The Only No-Compromise Gun Lobby in Washington

RE: COMMENTS ON ATF'S "WILLFULNESS" NPRM

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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Submitted by Gun Owners of America & Gun Owners Foundation.

GOA & GOF COMMENTS TO ATF ON THE "WILLFULNESS" NPRM

GOA FEDERAL AFFAIRS | FORMAL COMMENTS ON RIN 1140-AA88 · 91 FED. REG. 25201 (MAY 8, 2026)

Re: *Defining "Willfully" for Firearms Violations (RIN 1140–AA88)*

DOJ RULEMAKING

On May 8, 2026, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") published a notice of proposed rulemaking to "define the term 'willfully' in Department of Justice ('Department') regulations that implement the Gun Control Act." 91 Fed. Reg. 25201, 25201 (May 8, 2026) ("NPRM").[1] Prior to this NPRM, neither the Gun Control Act ("GCA") nor federal regulations defined the term "willfully," which is the requisite mental state for certain criminal and civil violations of the GCA, including Federal Firearms License ("FFL") revocations. Specifically, the NPRM proposes to establish one standard for both criminal and civil violations, adopting the U.S. Supreme Court's interpretation of "willfully" in *Bryan v. United States*, 524 U.S. 184 (1998), a criminal case interpreting the term in the GCA. *See id.* Thus, the NPRM proposes defining "willfully" to mean that "the person intends to engage in conduct that the law forbids and acts with actual knowledge that the person's conduct is unlawful." *Id.* at 25209. Relatedly, the NPRM proposes to "establish when a person with supervisory authority or a responsible person" of an FFL "may be deemed to have willfully violated the GCA based on willful violations of his or her employees or subordinates." *Id.* at 25204. The NPRM seeks public comment by August 6, 2026 on "all aspects of the interpretive analysis and how to best implement the statutory text," whether "strict liability" for FFL employees' violations "is appropriate as a matter of policy," and "the clarity of this proposed rule and how it may be made easier to understand." *Id.* at 25205, 25208.

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

1 *See* https://www.govinfo.gov/content/pkg/FR-2026-05-08/pdf/2026-09159.pdf.

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 gun stores that are industry members of GOA's Caliber Club program. GOA and GOF were plaintiffs in *Morehouse Enterprises, LLC v. BATFE*, No. 3:23-cv-00129-PDW-ARS (D.N.D.),[2] and their members and supporters were plaintiffs in *Kiloton Tactical, LLC v. BATFE*, No. 3:23-cv-23985-MCR-ZCB (N.D. Fla.),[3] two statutory and constitutional challenges to the Biden-era ATF's "zero tolerance" FFL revocation policy. The central theory of that misguided Biden policy was that certain regulatory violations "inherently demonstrate willfulness,"[4] meaning the mere fact of their occurrence was all ATF needed to automatically initiate costly FFL revocation proceedings and, quite literally, ruin livelihoods. As the Trump White House recently explained, the Biden-era "zero tolerance" policy "attack[ed] gun-owning Americans and undermine[d] the Second Amendment by … shut[ting] down small businesses across the Nation."[5] GOA and GOF submit these comments to ensure that the Biden ATF's destruction of small businesses never occurs again, by codifying strong protections for gun owners and industry members alike.

SUMMARY OF COMMENTS

Because the federal regulation of firearms "is not … deeply rooted in history," *United States v. Biswell*, 406 U.S. 311, 315 (1972), the GCA's licensing requirements violate the Second Amendment. The Second Amendment guarantees "the right of the people to keep and bear Arms" and expressly commands that this right "shall not be infringed." However, so long as ATF continues to enforce Congress's unconstitutional statutory scheme, Commenters welcome and applaud ATF's efforts to codify a stringent "willfulness" standard from *Bryan v. United States*, 524 U.S. 184 (1998), a change that Commenters recommended previously. Moreover, the definition of "willfully" adopted in the NPRM aligns with congressional intent in enacting the Firearms Owners' Protection Act ("FOPA") to protect firearms dealers and gun owners from arbitrary and capricious actions by ATF, including the revocation of licenses. Thus, the NPRM rightly concludes that "willfully" must have the same meaning across criminal and civil contexts, based on the GCA and FOPA's text, history, and structure. Likewise, the NPRM persuasively explains how the circuit courts have diluted the GCA's civil-context "willfulness" standard, distinguishing the entirely inapposite statutory scheme at issue in *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47 (2007). In short, there is much that this NPRM gets right.

That said, the NPRM could be improved in at least three ways. First, ATF should safeguard industry members and further repudiate Biden-era "zero tolerance" by clarifying that ATF must establish willfulness *before* initiating FFL revocation. Second, ATF should scrap any sort of strict liability regime for FFLs based

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2 *See* https://www.courtlistener.com/docket/67599436/morehouse-enterprises-llc-v-bureau-of-alcohol-tobacco-firearms-and/.
3 *See* https://www.courtlistener.com/docket/67744253/kiloton-tactical-llc-v-bureau-of-alcohol-tobacco-firearms-and-explosives/.
4 https://storage.courtlistener.com/recap/gov.uscourts.ndd.60827/gov.uscourts.ndd.60827.1.3.pdf at 6.
5 Russell T. Vought, *Major Discretionary Funding Changes*, Exec. Off. of the President (May 2, 2025), https://tinyurl.com/5n86f5vv, at 19.

on employees' misconduct. "Strict liability" is exactly what Congress enacted the "willfulness" standard to *avoid*. And third, ATF has grossly underestimated the costs to the firearm industry and Second Amendment community wrought by Biden's "zero tolerance" policy, while grossly overestimating any entirely theoretical negative effects on public safety.

COMMENTS ON PROPOSED RULE

A. ATF Should Clarify that "Willfulness" Must Be Found *Before* ATF Can Initiate FFL Revocation.

The NPRM notes that "the prior administration's ['zero tolerance'] policy diluted the willfulness requirement – lowering the bar, in practice, from intentional/reckless wrongdoing to negligence." NPRM at 25204. In reality, "zero tolerance" did much more than that, reverting FFL licensing to a pre-FOPA strict liability regime.[6] Indeed, under "zero tolerance," ATF compliance inspectors lost their "significant discretion to consider the totality of any given situation and to craft an appropriate remedy based on a unique set of facts."[7] Instead, ATF personnel merely catalogued violations, many of which *automatically* yielded FFL revocation "absent extraordinary circumstances…."[8] That is not merely the "dilut[ion]" of willfulness, but rather its elimination.

Accordingly, during the Biden years, FFL revocation proceedings exploded with "an increase of 407 percent in ATF's estimated number of notices between 2021 and 2022 when [zero tolerance] was implemented…." NPRM at 25206. And even if FFLs ultimately kept their licenses following a revocation hearing, the process was the punishment. In Commenters' experience, defending against revocation can cost an FFL *tens of thousands* of dollars in legal bills – or more – an oftentimes prohibitively expensive prospect for small businesses. *See* Section III, *infra*.

To ensure that Biden-era abuses cannot recur, ATF should couple a stringent "willfulness" standard with a publicly stated procedural safeguard – the requirement that ATF *first* must find "willfulness" *before* it can initiate FFL revocation. This way, no regulatory violation could ever again be claimed to "inherently demonstrate willfulness," as the Biden-era "zero tolerance" policy once maintained. Instead, ATF would have to make out a case against an FFL at the outset, rather than saving itself the work and saddling the FFL with defense costs at an administrative hearing.[9] Thus, ATF should codify the requirement that ATF personnel must "*establish willfulness … to proceed* with revocation," just as its pre-"zero tolerance" Administrative Action Policy provided.[10] The NPRM already supports the inclusion of this safeguard,

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6 *See, e.g.*, Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss at 17 n.21, *Morehouse Enters., LLC v. BATFE*, No. 3:23-cv-00129-PDW-ARS (D.N.D. Apr. 18, 2024), ECF No. 62 (citations omitted) ("[I]n the case of former FFL Randy Lewis Spence, both the IOI and Area Supervisor recommended a warning letter rather than revocation, with the IOI observing that '[w]illfulness was not present.' Even so, Spence's report continues: 'After consultation with counsel the recommendation is revocation.' Former FFL Charles A Harter's revocation documents reveal that his Area Supervisor recommended only a warning conference: 'Although the inspection findings appear to the meet the standard of revocation under the new memorandum guidelines … the establishment of actual willfulness is difficult to prove.' But the DIO overruled under the AAP's mandatory revocation standard. And as for former FFL Lohman Arms Company LLC, its IOI recommended a warning conference, observing that '[i]t appears this violation was a result of inadvertence; therefore, we should assist the licensee in taking corrective actions….' But again, Lohman's Area Supervisor and DIO overruled and revoked under the AAP.").

7 https://storage.courtlistener.com/recap/gov.uscourts.flnd.480524/gov.uscourts.flnd.480524.1.0.pdf at ¶63.

8 *Id.* ¶57. When asked whether they had any role to play in determining whether a violation had been committed "willfully," one Biden-era ATF inspector answered, "'No, sir. Not my job.'" *Id.* ¶70.

acknowledging that, "in every case, the totality of the circumstances must be considered to determine willfulness…." NPRM at 25209.

To that end, ATF should amend another portion of the same regulation to align with the statutory text. Both the current version of 27 C.F.R. § 478.73(a) and the NPRM provide that the Director may initiate revocation if he "has reason to believe" a willful violation occurred. *See* NPRM at 25209. In contrast, the governing statute contains no such reference to the Director's 'beliefs,' even though Congress knew how to use that language when it wanted to. *Compare* 18 U.S.C. § 923(e) ("The Attorney General may, after notice and opportunity for hearing, revoke any license … if the holder of such license has willfully violated any provision of this chapter…."), *with id.* § 923(g)(1)(A) ("The Attorney General, when he has reasonable cause to believe a violation of this chapter has occurred … may, upon … securing from such magistrate judge a warrant authorizing entry, enter during business hours the premises…."). In order to prevent future abuses where an ATF Director has only some atextual and watered-down "reason to believe" a willful violation may have occurred, on the misguided and atextual theory that some violations "inherently demonstrate willfulness," ATF should remove references to the Director's beliefs and simply track the statutory language, context, and purpose.

Finally, ATF should more clearly repudiate its prior tactics for establishing FFL "willfulness" in its final rule. To be sure, the NPRM criticizes ATF's historic practice of relying on Industry Operations Investigators' ("IOIs") brief, verbal review of "difficult and technical" regulations with FFLs to establish FFLs' knowledge of those regulations. NPRM at 25204. As the NPRM notes, ATF used this "supposed[] … notice of the GCA's pertinent legal requirements" to "move to revoke licenses when these requirements were violated, even if the violations were unintentional," on the theory that a cursory review of voluminous regulations with an FFL forever sufficed to establish the FFL's perfect knowledge of *all those regulations*. *Id.* Of course, revoking an FFL using such "evidence" was as absurd as revoking a driver's license for a motorist's one-off failure to use their turn signal, on the theory that their driver's ed materials notified them of proper turning procedure decades ago. It seems uncontroversial that FFLs should not be treated so harshly.

Even so, the NPRM does not actually codify its repudiation of ATF's prior practice in the regulatory text. Without explicitly providing that verbal review of regulations does not suffice to establish "actual knowledge" (NPRM at 25209), the NPRM risks allowing a continuation of the same sorts of dirty tricks ATF used to revoke FFLs in the past. *See Select Specialty Hosp. - Akron, LLC v. Sebelius*, 820 F. Supp. 2d 13, 25 (D.D.C. 2011) ("Language in the preamble of a regulation is not controlling over the language of the regulation itself."). ATF should clarify and codify its repudiation of this tactic, not bury it in the middle of the NPRM's noncontrolling preamble.

9 The Biden ATF's automatic "willfulness" presumption often proved to be wrong once challenged at an administrative hearing. *See* Exhibit B at 2, *Morehouse Enters., LLC v. BATFE*, No. 3:23-cv-00129-PDW-ARS (D.N.D. Sept. 8, 2023), ECF No. 34-2 ("On August 16, 2023, ATF conducted a hearing on this matter in accordance with the GCA. After review of the evidence introduced at the hearing, I have determined not to issue a Final Notice of Revocation in this matter.").
10 https://storage.courtlistener.com/recap/gov.uscourts.ndd.60827/gov.uscourts.ndd.60827.1.4.pdf at 6.

B. The NPRM's Vague "Strict Liability" Provision Defies Congressional Intent and Invites Abuse.

The NPRM proposes to "provide more information on how the term ['willfully'] applies in specific scenarios…." NPRM at 25204. Consequently, the NPRM seeks to apply the doctrine of respondeat superior, a form of vicarious, "strict liability," to scenarios where a low-level employee of an FFL commits a violation, as opposed to the FFL itself or one of its responsible persons. *Id.* at 25205. In those scenarios, the FFL would be held liable for the willful violation, as if it had committed the violation itself, so long as the FFL had knowledge of and was determined to have somehow "ratified" the employee's conduct. *See id.* The NPRM "seeks comment on whether such strict liability is appropriate as a matter of policy." *Id.*

It is not. One need look no further than the FOPA's legislative history to confirm that this was never Congress's intent. Indeed, the FOPA's enactment of the "willfulness" requirement was intended to depart from "the strict liability provided by" the original GCA.[11] Accordingly, Congress intended precisely the *opposite* of the "strict liability" the NPRM now proposes.

Moreover, the NPRM's specific language on this point is susceptible to abuse. The NPRM provides that an FFL acts willfully if it has "actual knowledge" of an employee's violation, and the FFL "[f]ail[s] to take *appropriate* remedial or disciplinary action…." NPRM at 25209 (emphasis added). Of course, what constitutes an "*appropriate*" remedial action is inherently subjective and vague. Rather than empowering itself to decide what is and is not "appropriate," ATF should be *minimizing* its latitude to revoke.

Thus, at a minimum, ATF should amend this portion of the regulatory text to clarify the point at which an FFL's failure to remedy an employee's known violation will establish "willfulness." For instance, rather than vaguely requiring an FFL to take "*appropriate*" remedial action, ATF could require the FFL to take "*reasonable steps to correct the violation and ensure it does not recur*." While reasonableness is also susceptible to interpretation, it is at least an objective standard. In contrast, "appropriateness" is whatever ATF decides – an agency with a long history of *unreasonable* positions.

C. The NPRM's Cost-Benefit Analysis Is Wildly Inaccurate.

Finally, the NPRM understates the damage "zero tolerance" caused – and thus the benefit the NPRM would bring – while overstating the risk to "public safety" that the NPRM's statutory fidelity would pose.

Start with the NPRM's estimate that the prior regime caused FFLs to incur *only about $2,100* to defend against a "zero tolerance" revocation hearing. NPRM at 25206. A number of Commenters' attorneys personally have defended FFLs in exactly these sorts of revocation hearings, and a fee of $2,100 would not have begun to compensate the intensive work it takes even to *prepare* such a hearing. Indeed, the NPRM assumes the only legal costs FFLs incurred were from the revocation hearings themselves, ignoring hours of painstaking behind-the-scenes preparation, including the review of voluminous ATF regulations with which attorneys must maintain familiarity, the examination of dozens or perhaps hundreds of documents to understand the complex factual scenarios at issue, and even the hiring of other specialists, such as former IOIs, to aid in review and strategy. Accordingly, in Commenters' experience, the few attorneys nationwide

11 132 Cong. Rec. 6841 (Apr. 9, 1986), https://www.congress.gov/99/crecb/1986/04/09/GPO-CRECB-1986-pt5-7-1.pdf.

who are capable of handling an ATF revocation hearing often quote minimum retainers on the order of $25,000 or more – to say nothing of subsequent judicial review in a district court. For instance, one of Commenters' industry members maintained a $50,000 insurance policy to defend against FFL revocation – $27,000 of which was used to successfully handle a Biden-era "zero tolerance" hearing in 2023. *That* is probably the average – not $2,100. Accepting ATF's "annual average of 113 hearings" as true (*id.*), that would mean the prior regime cost FFLs more than $3 *million* annually on the low end, or over *$30 million* over ten years.

Next, the NPRM "estimates the impacts of the proposed rule to also include potential qualitative costs in the form of greater risks to public safety," such as "a prohibited person obtaining a firearm without a background check" or "an FFL refusing to comply with a trace request in pursuit of a violent criminal…." NPRM at 25206-07. But in Commenters' experience litigating the "zero tolerance" cases, this concern is all but a non-issue. Indeed, in reviewing dozens of revocation notices and speaking with numerous FFLs facing "zero tolerance" revocation, Commenters' attorneys do not recall a single prohibited person ever obtaining a firearm as a result of a "zero tolerance" regulatory violation. To the contrary, each time ATF identified a purported violation it believed inherently risked public safety, the reality was either that the violation had not occurred in the first place, or that the facts painted an entirely different picture than ATF believed.

For example, ATF accused one FFL of doling out firearms without running background checks, only to learn that the FFL *had* in fact run the background checks in question, a reality to which each of the buyers testified. An FFL similarly was accused of failing to perform background checks but, in reality, the "violation" was merely the erroneous entry of certain gunsmithing guns – for which no background check was required – into the wrong bound book. Finally, another FFL was accused of failing to conduct a background check when it instead had verified that the buyer had a qualifying Brady Alternate permit which *statutorily exempted* him from a NICS check.

Moreover, most times that ATF has claimed an FFL had not responded to a trace request – a "zero tolerance" offense (*id.* at 25206 n.11) – in fact it was ATF's *own system* that had failed to capture the FFL's timely response. For example, one FFL, a member of GOA, was accused of repeatedly failing to respond to trace requests, only to provide ATF with copies of each of his timely response emails – which ATF apparently had ignored. Not one of these situations involved any risk to public safety – nor can Commenters recall having reviewed a single "zero tolerance" fact pattern that did. And so, the NPRM's claim of some hypothetical risk to public safety is speculation, at best.

Finally, the NPRM fails to wrestle with the prior "zero tolerance" regime's costs to former FFLs and the Second Amendment community at large – both tangible and intangible. For example, the NPRM never discusses the cost of *losing one's livelihood* to a wrongful "zero tolerance" revocation – a harm that ATF acknowledges is worthy of at least some reparation on its website now.[12] In the case of at least one of Commenters' industry members, that cost is upwards of $1 million. *See Texas v. BATFE*, 737 F. Supp. 3d 426, 438 (N.D. Tex. 2024) ("GOA describes a former FFL whose retirement savings are now frozen in unsellable inventory."). And, because "zero tolerance" harmed more FFLs than just those who lost at an

12 *See* https://www.atf.gov/firearms/protecting-second-amendment-rights (inviting "[f]ederal firearms licensees that surrendered their licenses, had their licenses revoked, or had their applications denied" under "zero tolerance" to "reapply").

administrative hearing – indeed, many of Commenters' members simply surrendered their licenses to avoid legal costs[13] – the costs to the Second Amendment industry are far greater – perhaps unknowable – than the NPRM lets on.

Likewise, the NPRM never acknowledges the damage to the Second Amendment supply chain that "zero tolerance" caused, and which the new "willfulness" standard will mitigate. For instance, in Commenters' *Morehouse* case, Bridge City Ordnance ("BCO") was "the only 'real' retail gun store in Valley City," North Dakota.[14] Had ATF's "zero tolerance" weaponization against BCO been successful, then untold numbers of people would have had to "expend significant additional resources in the form of time and travel to traverse a much further distance in order to acquire constitutionally protected arms."[15] Multiply that out by the many FFLs who *were* revoked under "zero tolerance," and the damage to the Second Amendment is clear. But, of course, that was the point of "zero tolerance" all along.

In other words, the NPRM simultaneously overstates the risks of statutory fidelity, while failing to credit itself for addressing the significant harms "zero tolerance" caused.

CONCLUSION

Commenters applaud ATF's efforts to establish a stringent and consistent "willfulness" standard. Indeed, the NPRM largely comports with the text, history, structure, and purpose of the GCA and FOPA. But there is room for improvement, and ATF should accept Commenters' suggestions to further clarify the regulation. First, ATF should codify procedural safeguards to ensure that ATF will only initiate revocation proceedings upon a requisite finding of willfulness, and that a cursory verbal review of regulations with FFLs does not suffice to establish "actual knowledge" of legal obligations. Second, ATF should nix the NPRM's language imposing strict liability on FFLs for low-level employees' actions, which is what Congress sought to avoid, or at least modify the language to avoid giving ATF unbridled discretion to decide what it thinks is "appropriate." And third, ATF should revisit and correct its cost-benefit analysis, which grossly understates the harms of Biden-era "zero tolerance" while overstating any hypothetical risks to the public of statutory fidelity.

Respectfully submitted,

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13 One of Commenters' members reported being unable to afford even a $5,000 legal retainer, and so simply surrendered its license instead.
14 https://storage.courtlistener.com/recap/gov.uscourts.ndd.60827/gov.uscourts.ndd.60827.1.0.pdf at ¶14.
15 *Id.*