Bureau of Alcohol, Tobacco, Firearms and Explosives
Office of Regulatory Affairs, Enforcement Programs and Services
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Washington, DC 20226
Filed via: https://www.regulations.gov (Docket ATF-2026-0074 accepts direct comments)

Re: Docket No. ATF-2026-0074; RIN 1140-AB01 â€” Revising Regulations Defining "Engaged in the Business" as a Dealer in Firearms
Regulations.gov reference: ATF-2026-0074 (participating agency, comment form available)
Comment deadline: August 4, 2026

To the Bureau:

I write in opposition to the proposed rule published at 91 Fed. Reg. (May 6, 2026) (Docket No. ATF-2026-0074, RIN 1140-AB01), which would rescind 27 CFR 478.13(b) through (h) in their entirety and strip the rebuttable-presumption examples the Bureau adopted in its April 19, 2024 final rule, "Definition of Engaged in the Business as a Dealer in Firearms." Those examples implement the definition Congress enacted in Section 12002 of the Bipartisan Safer Communities Act, Public Law 117-159, 136 Stat. 1313, 1324 (2022), which amended 18 U.S.C. 921(a)(21)(C) to define "engaged in the business," as applied to a dealer in firearms under 18 U.S.C. 921(a)(11)(A), as a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms, excluding only a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of a personal collection of firearms. Congress enacted that amendment specifically to close what is commonly called the gun-show loophole by replacing the prior requirement that a seller's principal objective include both livelihood and profit with the broader "predominantly earn a profit" standard, thereby bringing high-volume unlicensed sellers who lack a fixed business location or a primary income motive within the licensing and background-check requirements of 18 U.S.C. 923(a) and the Brady Act's point-of-sale check obligation at 18 U.S.C. 922(t).

Rescinding the 30-day and one-year repetitive-resale presumptions and the seven enumerated circumstances establishing intent to predominantly earn a profit under current 27

CFR 478.13(c) and (d)(2) does not alter the statute Congress wrote, but it eliminates the only concrete, publicly known evidentiary framework by which an unlicensed seller, a firearms-transfer platform, or ATF field personnel can determine in advance whether a given pattern of repetitive sales triggers the licensing and background-check duty. The Bureau's own proposal concedes there is no bright-line numerical threshold in the statutory text and that selling two firearms can constitute engaging in the business while selling fifty may not, which is precisely the indeterminacy the 2024 presumptions were adopted to reduce. Removing that guidance while leaving the underlying statutory standard untouched does not restore fidelity to the statute; it removes the mechanism that gave the statute practical effect for the class of sellers BSCA was enacted to reach, and it does so without any change in

Congress's 2022 judgment that those sellers must be licensed and must conduct the background checks required under 18 U.S.C. 922(t).

The Bureau's principal stated justification is that the 2024 rule "did not result in an increase in Type 01 licensees" and that Type 01 applications fell from 7,445 in fiscal year 2021 to 4,160 in fiscal year 2025, with total Type 01 licensees falling from 52,993 to 46,072 over the same period. That justification does not withstand scrutiny under the reasoned-decisionmaking requirement embedded in the Administrative Procedure Act's rulemaking provisions, 5 U.S.C. 553(c), and articulated in Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983), which requires an agency to examine the relevant data and provide a satisfactory explanation for its action, including a rational connection between the facts found and the choice made, and forbids an agency from entirely failing to consider an important aspect of the problem. A general decline in licensing applications that began in fiscal year 2021, before the 2024 rule ever took effect on May 20, 2024, is not evidence that the presumptions caused or failed to prevent that decline, and the Bureau's proposal does not identify any analysis isolating the presumptions' effect from the pre-existing downward trend it acknowledges. An agency that observes a metric moving in an unexpected direction must explain why the chosen remedy is repeal rather than recalibration; the Bureau does not explain why refining the presumptions, narrowing their scope, or clarifying the burden-of-proof concerns it raises would not address every problem it identifies while preserving the enforcement clarity Congress's 2022 amendment was designed to produce.

The Bureau also states it rescinds the presumptions because they "have not shown the expected impact" and because an anecdotal survey of field divisions found no instance of the presumptions being cited in civil proceedings since the 2024 rule took effect, alongside only two enforcement proceedings against licensees since that date. Non-use of a tool in two years of enforcement activity is not a reasoned basis for concluding the tool is unnecessary or harmful; it is equally consistent with the presumptions deterring noncompliance before it reaches an enforcement posture, which is the ordinary and intended function of a bright-line evidentiary aid. State Farm forecloses an agency from relying on the absence of a fully developed evidentiary record to justify eliminating a regulatory protection when a less drastic option, such as retaining the presumptions in civil administrative matters while excluding them from criminal proceedings as the Bureau already does to satisfy Sandstrom v. Montana, 442 U.S. 510 (1979), was available and unaddressed in the proposal.

Because the statutory definition in 18 U.S.C. 921(a)(21)(C) supplies no numerical threshold and expressly depends on fact-intensive concepts such as regularity, repetition, and predominant intent, removing the Bureau's own interpretive examples increases rather than decreases the risk of inconsistent enforcement and non-compliance among precisely the high-volume unlicensed sellers BSCA targeted, undermining the statute's core purpose of ensuring that persons predominantly profiting from repetitive firearm sales are licensed and conduct background checks under 18 U.S.C. 922(t). The Bureau should withdraw this proposal or, at minimum, republish a revised proposal that identifies specific presumptions warranting amendment, supported by evidence tied to those specific provisions rather than an aggregate licensing trend that predates the rule being rescinded.

Respectfully submitted,
Concerned Citizen