August 5, 2026

Submitted via www.regulations.gov

Director Robert Cekada
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue NE
Washington, DC 20226

Re: Defining "Willfully" for Firearms Violations, Docket No. ATF-2026-0265; RIN 1140-AA88, 91 Fed. Reg. 25201 (May 8, 2026)

Dear Director Cekada:

Governing for Impact (GFI) submits this comment on a Proposed Rule, "Defining 'Willfully' for Firearms Violations" (Proposed Rule), issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).[1] GFI is a regulatory policy organization dedicated to ensuring that the federal government operates more effectively for working Americans.

ATF proposes to define the word "willfully" in 18 U.S.C. § 923(e) to mean where a person "intends to engage in conduct that the law forbids and acts with actual knowledge that the person's conduct is unlawful."[2] "Willfully," as it now appears in the Gun Control Act of 1968 (GCA), is currently undefined. If finalized, the Proposed Rule would define "willfully" such that it shields federal firearms licensees (FFLs) who violate the GCA with plain indifference or disregard towards its provisions by enabling them to keep their licenses.

The Proposed Rule is unlawful. First, it fails to adopt the best and most widely accepted definition of "willfully" as it appears in a civil context—a definition that has been adopted by nine circuit courts, as the Proposed Rule acknowledges. Second, the Proposed Rule is arbitrary and capricious because it fails to consider a crucial aspect of the issue at hand: public safety. ATF should therefore withdraw the Proposed Rule.

In addition, we ask that ATF disclose whether it used or plans to use artificial intelligence in connection with this rulemaking.

I. Background

The GCA created the federal firearms licensing scheme. To sell, collect, import, or manufacture a firearm, an individual must obtain a license under 18 U.S.C. § 923, thereby making him or her an FFL. The Attorney General may, under § 923, revoke the license of an FFL who commits a civil violation of any provision of the GCA.[3] Such violations include failing to maintain records of importation, production, or sale.[4] Criminal violations of the GCA are governed separately by § 924.[5] As of May 2026, there were 77,515 FFLs in the United States.[6]

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[1] 91 Fed. Reg. 25201 (May 8, 2026).
[2] *Id.* at 25209.
[3] 18 U.S.C. § 923(e) (1968).
[4] *Id.* § 923(g).
[5] *Id.* § 924.
[6] Federal Firearms Listings, Bureau of Alcohol, Tobacco, Firearms and Explosives, https://www.atf.gov/firearms/tools-and-services-firearms-industry/federal-firearms-listings.

In 1986, Congress passed the Firearms Owners' Protection Act (FOPA), which amended the GCA.[7] FOPA, among other changes, added the word "willfully" to § 923(e) such that it now reads: "The Attorney General may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has willfully violated any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter."[8] FOPA also added the word "willfully" into § 923(d), which governs the granting of licenses, such that it now reads: "Any application submitted under subsection (a) or (b) of this section shall be approved if . . . the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder . . . ." The word "willfully" was not itself defined by FOPA.

ATF now seeks to define the word "willfully" in § 923(e), which controls license revocation, by regulation.[9] It asserts that the Biden administration, with its emphasis on public safety, effectively defined willfulness as negligence, creating a low bar for license revocation.[10] It asserts that willfulness should be defined as a knowing violation of law—a much higher bar—to prevent future administrations from "dilut[ing] the willfulness requirement."[11]

II. The Proposed Rule is inconsistent with the best meaning of "willfully."

As the Supreme Court recently explained in *Loper Bright Enterprises v. Raimondo*, "statutes . . . do—in fact, must—have a single, best meaning" and if an agency's chosen meaning "is not the best, it is not permissible."[12] ATF's definition is not a permissible reading of "willfully" for four reasons. First, in the civil context, "willfully" has long been interpreted to include plain indifference or disregard. Second, the definition of willfully established by the Supreme Court in *Bryan v. United States*, on which ATF bases the Proposed Rule, does not support the proposal: the *Bryan* decision pertains to § 924 of the GCA, which addresses criminal violations, not to § 923, which addresses civil violations. Third, the definition of "willfully" in a civil context, as articulated in *Safeco Ins. Co. of Am. v. Burr*, but dismissed by ATF in its Proposed Rule, should properly control here. Fourth, ATF's other arguments in support of a narrower definition of "willfully" are unpersuasive.

A. Willfully, in a civil context, encompasses plain indifference or disregard.

In a civil context, the term "willfully" has long incorporated acts performed with plain indifference or disregard. While Black's Law Dictionary allows that willfulness can "involve[] conscious wrong or evil purpose on the part of the actor," it makes clear that "inexcusable carelessness" can also constitute willfulness.[13] Additionally, Webster's Third New International Dictionary, which was published in 1961 and remained the most current edition at the time of FOPA's passage, states that willful action encompasses being "governed by will . . . without regard for reason"—that is, done with disregard.[14] Similarly, the 1984 edition of Prosser and Keeton on Law of Torts, the authoritative torts treatise, notes: "'Although efforts have been made to distinguish' the terms 'willful,' 'wanton,' and 'reckless,' 'such distinctions have consistently been ignored, and the three terms have been

[7] Firearms Owners' Protection Act, Pub. L. No. 99-308, § 103, 100 Stat. 449, 453 (1986).
[8] 18 U.S.C. § 923(e).
[9] 91 Fed. Reg. at 25204; *see also* 27 C.F.R. § 478.73.
[10] 91 Fed. Reg. at 25204.
[11] *Id.*
[12] 603 U.S. 369, 400 (2024).
[13] *Willful*, Black's Law Dictionary (12th ed. 2024), Westlaw.
[14] *Willful*, Webster's Third New International Dictionary 2617 (Philip Babcock Gove ed., 1961 & Addenda 1976), https://archive.org/details/webstersthirdnew0000unse/page/2617/mode/2up.

treated as meaning the same thing, or at least as coming out at the same legal exit.'"[15] This definition of "willfully" is especially important because, as torts are civil law, they explain what "willfully" means in a civil context.

The consensus that willfulness in the civil context encompasses conduct that is indifferent to or disregards the law is reflected in the unanimous view of every circuit court to have considered the term's meaning in § 923.[16] The Eighth Circuit, for instance, emphasized that "[f]or the violations [of § 923] alleged," the agency "must prove" that the petitioner "purposefully disregarded or was plainly indifferent" to the statutory requirements.[17] Along those lines, the Eleventh Circuit explained that it "agree[d] with" the other circuits that "a showing of purposeful disregard of or plain indifference to the laws and regulations imposed on firearms dealers shows willfulness . . .," a definition that "accords with other decisions of [the Eleventh Circuit] defining 'willful' violations in the context of regulatory schemes that impose civil penalties, as opposed to criminal ones."[18] The Third, Fourth, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits all agree.[19]

B. The *Bryan v. United States* definition of "willfully" does not support ATF's Proposed Rule.

ATF ignores the established definition of "willfully" in the civil context and instead proposes adopting the definition of "willfully" applied to 18 U.S.C. § 924 by the Supreme Court in *Bryan v. United States.*[20] *Bryan* held that a firearms dealer is criminally liable for willfully violating the GCA if the defendant acted "with knowledge that his conduct was unlawful."[21] The *Bryan* decision, however, does not support ATF's Proposed Rule for two reasons.

First, *Bryan* acknowledges that willfulness can include unintentional conduct in the civil context—exactly the definition that ATF argues *Bryan* precludes. The Court noted that "[t]he word willfully is sometimes said to be a word of many meanings whose construction is often dependent on the context in which it appears."[22] And crucially, in a discussion of § 923(d), *Bryan* noted, with seeming approval, that "[w]hile some [circuits] had stated that willfulness . . . is satisfied by a disregard of a known legal obligation, willful was also interpreted variously to refer to purposeful, intentional conduct, *indifference to the requirements of the law*, or merely a conscious, intentional,

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[15] *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57 (2007) (*quoting* W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 34, at 212 (5th ed. 1984)).

[16] *See Simpson v. Att'y Gen. United States of Am.,* 913 F.3d 110, 114 (3d Cir. 2019); *RSM, Inc. v. Herbert,* 466 F.3d 316, 321 (4th Cir. 2006); *Fairmont Cash Mgmt., L.L.C. v. James,* 858 F.3d 356, 362 (5th Cir. 2017)(internal citation omitted); *Armalite, Inc. v. Lambert,* 544 F.3d 644, 647 (6th Cir. 2008); *Article II Gun Shop, Inc. v. Gonzales,* 441 F.3d 492, 497 (7th Cir. 2006); *Stein's Inc. v. Blumenthal,* 649 F.2d 463, 467 (7th Cir. 1980); *Lewin v. Blumenthal,* 590 F.2d 268, 269 (8th Cir. 1979); *Gen. Store, Inc. v. Van Loan,* 560 F.3d 920, 924 (9th Cir. 2009); *Perri v. ATF,* 637 F.2d 1332, 1336 (9th Cir. 1981); *Borchardt Rifle Corp. v. Cook,* 684 F.3d 1037, 1042 (10th Cir. 2012); *Willingham Sports, Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives,* 415 F.3d 1274, 1277 (11th Cir. 2005). The First, Second, and D.C. Circuit courts have not ruled on this issue; there is no circuit split. Courts have confirmed this reading of civil willfulness beyond 18 U.S.C. § 923. In *Vineland Fireworks Co. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*—a case ATF neglects to mention—the Third Circuit, construing 18 U.S.C. § 843, which governs fireworks and explosives licenses and revocations, held that willfulness encompassed "plain indifference to . . . a known legal duty." 544 F.3d 509, 517 (3d Cir. 2008).

[17] *Lewin*, 590 F.2d at 269 (*quoting Shyda* v. *Dir., Bureau of Alcohol, Tobacco & Firearms, U.S. Dep't of Treasury*, 448 F. Supp. 409, 415 (M.D. Pa. 1977)).

[18] *Willingham Sports, Inc. v. ATF,* 415 F.3d 1274, 1277 (11th Cir. 2005).

[19] *Supra* note 15.

[20] 524 U.S. 184 (1998).

[21] *Id.* at 193.

[22] *Id.* at 191 (internal quotation marks omitted).

deliberate, voluntary decision."[23] Indeed, the Seventh Circuit, interpreting § 923, rejected as "incorrect" the argument "that *Bryan* eliminated the plain indifference standard and held that willfulness requires a bad purpose to disobey or to disregard the law."[24] At least two circuit courts have explicitly cited *Bryan*'s support of reading willfully in § 923 to include plain indifference or disregard[25]—a fact that ATF neglects.

Second, *Bryan*'s holding that willfulness under § 924 requires intentional conduct does not govern § 923. That is because "willfully," when used to define civil, rather than criminal, offenses, encompasses plain indifference.[26]

In the civil context, "willfully" has an established common law meaning that encompasses some unintentional violations. The Supreme Court explained in *Safeco Ins. Co. of Am. v. Burr* that "where willfulness is a statutory condition of civil liability," the Court had "generally taken it to cover not only knowing violations of a standard, but reckless ones as well,"[27] because the "[c]ivil use of the term . . . typically presents neither the textual nor the substantive reasons for pegging the threshold of liability at knowledge of wrongdoing."[28] When Congress adopts a term with a well-established common law meaning, the term presumptively carries that meaning with it.[29] *Safeco* itself noted "the general rule that a common law term in a statute comes with a common law meaning, absent anything pointing another way."[30] And the Supreme Court recently reiterated that when "Congress enact[s] [a] statute 'against the backdrop of the common law,'" it "'intends to incorporate the well-settled meaning of the common-law terms it uses.'"[31] Only when "willfully" appears in a criminal context is it construed more narrowly. There, it "is tailored to the criminal law, where it is characteristically used to require a criminal intent beyond the purpose otherwise required for guilt."[32]

That the same term has a different scope depending on its context makes good sense. As a leading criminal law treatise put it, "[t]here are . . . a number of differences between criminal law and civil law because of their different functions"[33] and "criminal punishment, with emphasis on imprisonment, is on the whole more drastic than the sanctions, with emphasis upon paying money, imposed by the civil law . . . ."[34] Given this difference, "willfully" has long been understood to carry a narrower meaning when it appears in a criminal context.[35]

Thus, the *Bryan* definition of willfully for § 924 does not apply here—as *Bryan* itself suggested. "Willfully" in the civil context has long been interpreted to carry its common law meaning, which

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[23] *Id.* at 196–97 (internal quotation marks omitted; emphasis added).
[24] *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492, 497 (7th Cir. 2006) (internal quotation marks omitted).
[25] *See Article II Gun Shop, Inc.*, 441 F.3d at 497; *RSM, Inc.*, 466 F.3d at 321.
[26] *Safeco Ins. Co. of Am.*, 551 U.S. at 57.
[27] *Id.*
[28] *Id.* n.9.
[29] *Morissette v. United States,* 342 U.S. 246, 263 (1952) (explaining that "where Congress borrows terms of art . . . it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind . . .").
[30] 551 U.S. at 58.
[31] *Trump v. Cook,* 609 U.S. __, 2026 WL 1855613, at *9 (U.S. June 29, 2026) (*quoting Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 589 U.S. 327, 335 (2020), and *Jam v. Int'l Fin. Corp.*, 586 U.S. 199, 211 (2019)).
[32] *Safeco,* 551 U.S. at 57 n.9.
[33] 1 Wayne R. LaFave, *Substantive Criminal Law* § 1.3 (3d ed. 2018).
[34] *Id.* § 1.3(a).
[35] *See, e.g., Screws v. United States*, 325 U.S. 91, 93, 101-04 (1945) (plurality opinion) (affirming a "narrower construction" of willfully in the context of a criminal civil-rights statute).

includes plain indifference or disregard, and so ATF's proposal to apply the *Bryan* definition is a clear mismatch.

C. ATF's efforts to distinguish *Safeco* are unpersuasive.

As just discussed, *Safeco* reinforces the well-established understanding that, in the civil context, willfulness encompasses some unintentional conduct. ATF dismisses *Safeco*'s relevance, but its rebuttals come up short.

Safeco's extensive consideration of willfulness in the civil context provides guidance for defining willfully in § 923. In *Safeco*, the Court interpreted "willfully" in the context of the Fair Credit Reporting Act (FCRA), a civil law that protects consumer information in the possession of insurers. *Safeco*, as discussed, determined that willfully in the civil context incorporates indifference or disregard, in light of the term's well-established common law meaning. But the *Safeco* court was also called upon to examine other mens rea terms, since the FCRA provides for violations that are done "knowingly," "knowingly and willfully," and "negligent[ly]."[36] ATF seizes on that aspect of the analysis, asserting that because § 923 does not contain other levels of culpability, as the FCRA did, the *Safeco* definition of willfully cannot apply.[37] But this distinction is contrived.

First, *Safeco* dedicated ample time solely to considering the common-law meaning of willfully generally and in the civil context.[38] That discussion stands on its own—it does not turn on features of the particular statutory scheme. The *Safeco* Court's discussion of civil willfulness contained no limiting principle of the sort ATF tries to impose.[39]

Second, ATF's assertion that the FCRA is "materially different" from the GCA because the GCA does not use other mens rea terms like "knowingly" or "knowingly and willfully" is unsupported.[40] ATF's argument boils down to asserting that because willfully is the only culpability designation in § 923—in contrast to the multiple mens rea levels invoked by the FCRA—it must have a different meaning than the Supreme Court gave the term in *Safeco.* This argument makes no sense on its own terms and fails to acknowledge that *Safeco* addressed the idea of willfulness generally.

ATF also misstates the degree to which the circuit courts that have rejected its interpretation relied upon *Safeco*. ATF asserts that the circuit courts' alignment on the definition of willfully that includes plain indifference or disregard "rests on one case"[41]—that is, *Safeco*, which was decided in 2007. That is incorrect. Several of the circuit cases that apply and articulate this definition of willfully in § 923 predate *Safeco*.[42] ATF's failure to address the reasoning in these cases only underscores the flaws in its approach.

D. ATF's other arguments for a narrow definition of willfulness are unpersuasive.

ATF briefly makes several additional arguments as to why willfully in § 923 must be defined as knowingly violating the law. None is persuasive.

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[36] *Safeco*, 551 U.S. at 58-60, 69.
[37] 91 Fed. Reg. at 25203.
[38] *Safeco*, 551 U.S. at 56-59.
[39] *Id.* at 57.
[40] 91 Fed. Reg. at 25203-04.
[41] *Id.* at 25203.
[42] *See, e.g.*, *RSM, Inc.,* 466 F.3d at 321; *Article II Gun Shop, Inc.,* 441 F.3d at 497; *Stein's Inc.,* 649 F.2d at 467; *Lewin,* 590 F.2d at 269; *Perri,* 637 F.2d at 1336; *Willingham Sports, Inc.,* 415 F.3d at 1277.

First, ATF asserts that identical words in different parts of the same act are intended to have the same meaning.[43] But this presumption of consistent usage is just that: a presumption, which "is not rigid and readily yields whenever there is such variation in the connection . . . as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent."[44] As explained above, willfulness has a distinct—and broader—meaning in civil statutes like § 923. For its part, ATF cites the Supreme Court's decisions in *Leocal v. Ashcroft* and *Clark v. Martinez*.[45] But *Leocal* dealt with terms in a single section that had both criminal and noncriminal applications,[46] and *Clark* dealt with a single term in one provision that applied in several categories of cases.[47] Neither dealt with the situation present here: where the term appears in different statutory provisions, each with a distinct focus and reach, and is anchored to a civil-criminal distinction that courts have treated as dispositive in interpreting the meaning of willfulness.

Next, ATF turns to § 923(f)(4). Under this provision, the Attorney General may not revoke a license based on facts that underlie a prior criminal proceeding against a licensee, so long as that proceeding resulted in an acquittal.[48] From this, ATF reasons that willfully must mean the same thing in § 923 and § 924 because a failure to convict under § 924 precludes a revocation action under § 923.[49] This is incorrect. Section 923(f)(4) addresses criminal proceedings that are "instituted against a licensee alleging any violation of this chapter."[50] That it covers "*any* violation of this chapter" is key. It is a blanket rule preventing the government from using whatever it has discovered during a criminal proceeding to revoke an FFL's license as a civil penalty. This sheer breadth of the provision blunts any inference that the provision is drawing an implicit equivalence between the mens rea levels denoted in § 923 and § 924.

Finally, ATF asserts that FOPA was passed with the sole intention of ensuring protections for firearms owners to "curb abusive enforcement practices and ensure licenses were not revoked for inadvertent errors or technical mistakes."[51] But defining willfully to include plain indifference or disregard fulfills that purpose. Even the broader civil definition of willfully that encompasses plain indifference, disregard, or recklessness would not apply to those who had acted with care for the law—thus, not recklessly or with disregard or indifference—but still made honest, inadvertent errors. At any rate, ATF provides very little evidence of this single-minded and absolutist understanding of congressional intent, and, even if it had, its attempt to divine congressional intent cannot overcome the well-established meaning of willfully in the civil context.

III. The Proposed Rule is arbitrary and capricious.

Under *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.,* the seminal case on the arbitrary and capricious standard, when promulgating a new rule, an agency must "examine the relevant data," "articulate a satisfactory explanation for its action," and demonstrate "a rational connection between

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[43] 91 Fed. Reg. at 25203.
[44] *Atl. Cleaners & Dyers v. United States*, 286 U.S. 427, 433 (1932); *see also Envtl. Def. v. Duke Energy Corp.*, 549 U.S. 561, 573–74 (2007).
[45] 91 Fed. Reg. at 25202.
[46] 543 U.S. 1, 12 n.8 (2004).
[47] 543 U.S. 371, 378 (2005).
[48] 18 U.S.C. § 923(f)(4).
[49] 91 Fed. Reg. at 25202-03.
[50] 18 U.S.C. § 923(f)(4).
[51] 91 Fed. Reg. at 25203.

the facts found and the choice made."[52] In particular, a rule is arbitrary and capricious if the agency "failed to consider an important aspect of the problem."[53]

Here, the Proposed Rule is arbitrary and capricious because it fails to meaningfully address an important issue at the heart of the GCA: public safety. ATF barely pays lip service to the obvious implications that its proposed definition of "willfully" would have. ATF instead focuses on the alleged "quantifiable cost savings to FFLs" and asserts that its proposed definition of willfully still "subjects FFLs to revocation proceedings . . . that advance public safety."[54] ATF itself acknowledges that under its proposal, "incidents of neglect, uncorrected subordinate employee error, or other avoidable violations could go uncorrected . . . thereby increasing the risk of harm to public safety."[55] It states that "an unknown proportion" of people who violate the GCA annually, which it estimates at 152 violators a year,[56] will, put simply, get away with it. What ATF offers—a tangential and indirect circling of safety concerns—falls far short of a reasoned consideration of the impact of the Proposed Rule on public safety.

First, ATF makes no effort to quantify or qualify the nature of the public safety threat, openly admitting that the proportion of FFLs who will retain their licenses despite GCA violations is "unknown."[57] ATF does acknowledge that these violations could lead to, for example, "a prohibited person obtaining a firearm without a background check, an FFL refusing to comply with a trace request in pursuit of a violent criminal, or other similar consequential violations,"[58] but goes no further than to assert that it does not think it will happen very often. ATF cannot "point . . . to any data of the sort it would have considered if it had considered [the issue] in any meaningful way."[59] Here, for example, it provides no consideration of or data regarding FFLs who had retained licenses after a violation of the GCA in the past, why and in what context that occurred, if, how, and when the violations were discovered, or anything of that nature.

Even if ATF were correct that only a small number of violations would escape accountability under the Proposed Rule's framework, those violations could lead to serious public safety harms. For example, this proposed definition would mean that any firearms seller who fails to comply with the required background checks but does not do so knowingly could keep his or her license and face no punishment.[60] Meanwhile, data emphasize that background checks significantly reduce the prevalence of mass shootings, saving untold lives.[61] Purposefully allowing even a few violators of the GCA to slip through the cracks could have massive consequences.

Second, the Proposed Rule fails to account for how FFLs will change their behavior in response to ATF's new framework. If ATF makes it more difficult for the government to revoke licenses even for reckless violations, FFLs are likely to become more lax about complying with the

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[52] 463 U.S. 29, 43 (1983) (internal quotation marks omitted).
[53] *Id.*
[54] 91 Fed. Reg. at 25206.
[55] *Id.* at 25207.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Nat'l Treasury Emps. Union v. Horner*, 854 F.2d 490, 499 (D.C. Cir. 1988).
[60] §§ 922(t), 923(e).
[61] Everytown for Gun Safety, *New Research: States with Background Checks Experience Fewer Mass Shootings* (Nov. 12, 2015), https://www.everytown.org/press/new-research-states-with-background-checks-experience-fewer-mass-shootings/.

GCA[62]—including its provisions requiring record-keeping, background checks, compliance with law enforcement, and the like. Moreover, purchasers with nefarious intentions may gravitate toward reckless FFLs, given the well-established phenomenon that a small percentage of sellers provide a disproportionately large number of the firearms that are used criminally.[63] By simply vaguely noting the number of current violations that are likely to go unpunished, ATF utterly fails to address these downstream implications.

IV. ATF should disclose the use of artificial intelligence in connection with this rulemaking.

We request that ATF disclose information related to any use of artificial intelligence as part of this rulemaking and, to the extent such use is significant, provide an additional opportunity for public comment.[64] Under the APA's reasoned decisionmaking requirement, "[w]hen an agency uses a computer model, it must explain the assumptions and methodology used in preparing the model."[65] Moreover, the public must have notice of, and an opportunity to comment on, agencies' uses of models and data, AI-enhanced and otherwise, to regulate.[66] Such disclosures are "[t]he safety valves in the use of . . . sophisticated methodology."[67]

Beyond being legally required, disclosure of AI usage is prudent policy. Administrative agencies should uphold the values of transparency and public participation.[68] In particular, the Administrative Conference of the United States has recognized that "[a]gencies' efforts to ensure transparency in connection with their AI systems can serve many valuable goals," and it therefore recommends that "agencies might prioritize transparency in the service of legitimizing its AI systems, facilitating internal or external review of its AI-based decision making, or coordinating its AI-based activities."[69] Among other things, disclosure of AI usage allows the public to confirm that agencies are adhering to relevant laws, apply technical expertise to improve agencies' use of technology, assess the risk that federal policies might be influenced by biased or otherwise faulty methods or products, and learn about an emerging and important field of technology. Indeed, the Office of Management and Budget recently recognized that the government, in using AI, must "provide improved services to the public, while maintaining strong safeguards for civil rights, civil liberties, and privacy."[70]

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[62] *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000) (noting that "civil penalties . . . do more than promote immediate compliance . . .; they also deter future violations").

[63] *See* Letter from Carolyn B. Maloney, Chairwoman, H. Comm. on Oversight & Reform, to Gary M. Restaino, Acting Dir., Bureau of Alcohol, Tobacco, Firearms & Explosives, at 2 (Apr. 28, 2022), https://oversightdemocrats.house.gov/imo/media/doc/2022-04-28.%20CBM%20to%20Restaino-ATF%20re%20Gun%20Violence%20and%20Tracing.pdf.

[64] We adopt the definition of artificial intelligence at Pub. L. 115-232, § 238(g), 132 Stat. 1697–98.

[65] *Owner-Operator Indep. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 204 (D.C. Cir. 2007) (*quoting U.S. Air Tour Ass'n v. FAA*, 298 F.3d 997, 1008 (D.C. Cir. 2002)) (internal quotation marks omitted).

[66] *See Am. Radio Relay League v. FCC*, 524 F.3d 227, 236 (D.C. Cir. 2008); *Air Transp. Ass'n v. FAA*, 169 F.3d 1, 7 (D.C. Cir. 1999).

[67] *Sierra Club v. Costle*, 657 F.2d 298, 334 (D.C. Cir. 1981).

[68] *See* Attorney General's Manual on the Administrative Procedure Act 9 (1947) (describing the APA's purposes to include "requir[ing] agencies to keep the public currently informed of their organization, procedures, and rules" and "provid[ing] for public participation in the rule making process").

[69] Admin. Conf. of the U.S., Statement #20, Agency Use of Artificial Intelligence, 86 Fed. Reg. 6612, 6616 (Jan. 22, 2021).

[70] Memorandum for the Heads of Executive Departments and Agencies from Russell T. Vought, Director, Office of Management & Budget 1, M-25-21 (Apr. 3, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-21-Accelerating-Federal-Use-of-AI-through-Innovation-Governance-and-Public-Trust.pdf.

Consistent with these requirements and principles, we request that ATF disclose, first, whether it has used or plans to use AI as part of this rulemaking, including to develop substantive policy, produce supporting analysis, or respond to public comments. If so, ATF must disclose the particular AI product it has used and why it was selected, how that product was procured, whether the product was fine-tuned, what prompts or inputs the agency used to elicit responses from the product, and the responses the product produced. ATF must also disclose how agency staff used AI-produced information, including any quality control, peer review, or other validation performed. And ATF must disclose what measures it took to ensure that its use of AI complied with applicable data security and privacy requirements. To that end, it must disclose whether and to what extent any persons and entities not employed by the agency developed, modified, provided access to, or used AI in the course of the agency's decisionmaking process. To the extent the disclosed use of AI is significant, ATF must provide an additional opportunity for public comment.

V. Conclusion

If finalized, ATF's Proposed Rule, "Defining 'Willfully' for Firearms Violations," would be unlawful because it fails to adopt the best and most widely accepted definition of willfully in the civil context. It would likely also be arbitrary and capricious for failing to meaningfully examine potential impacts to public safety. Thus, we respectfully request that ATF withdraw the Proposed Rule.

Sincerely,

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