



DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR part 478

[Docket No. ATF-2026-0133; ATF No. 2025R-18P]

RIN 1140-AA73

Clarifying Interstate Transportation of Firearms under the Gun Control Act

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) proposes amending Department of Justice (“Department”) regulations to clarify that, for purposes of transporting firearms interstate, any activities that are reasonably necessary to transportation such as staying overnight in temporary lodging, stopping for food, fuel, vehicle maintenance, an emergency, or medical treatment, or transiting between modes of transportation, are considered “transport” and thus protected by the Gun Control Act provision that addresses interstate transport of firearms. The proposed rule also addresses transporting ammunition and firearm accessories between states and the requirements for securing firearms during such transit.

DATES: Comments must be submitted in writing, and must be submitted on or before (or, if mailed, must be postmarked on or before) [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Commenters should be aware that the federal e-rulemaking portal comment system will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by RIN 1140-AA73, by either of the following methods—

- *Federal e-rulemaking portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* 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; *ATTN: ATF 1140-AA73*.

Instructions: All submissions must include the agency name and number (RIN 1140-AA73) for this notice of proposed rulemaking (“NPRM” or “proposed rule”). ATF may post all properly completed comments received from either of the methods described above, without change, to the federal e-rulemaking portal, <https://www.regulations.gov>. This includes any personally identifying information (“PII”) or business proprietary information (“PROPIN”) submitted in the body of the comment or as part of a related attachment they want posted. Commenters who submit through the federal e-rulemaking portal and do not want any of their PII posted on the internet should omit it from the body of their comment and any uploaded attachments that they want posted. If online commenters wish to submit PII with their comment, they should place it in a separate attachment and mark it at the top with the marking “CUI//PRVCY.” Commenters who submit through mail should likewise omit their PII or PROPIN from the body of the comment and provide any such information on the cover sheet only, marking it at the top as “CUI//PRVCY” for PII, or as “CUI//PROPIN” for PROPIN. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at <https://www.regulations.gov>. Commenters must submit comments by using one of the methods described above, not by emailing the address set forth in the following paragraph.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Affairs, by email at ORA@atf.gov, by mail at Office of Regulatory Affairs; Enforcement Programs and Services;

Bureau of Alcohol, Tobacco, Firearms, and Explosives; 99 New York Ave, NE; Washington, DC 20226, or by telephone at 202-648-7070 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Attorney General is responsible for enforcing the Gun Control Act of 1968 (“GCA”), as amended. This responsibility includes the authority to promulgate regulations necessary to enforce the provisions of the GCA.¹ *See* 18 U.S.C. 926(a). Congress and the Attorney General have delegated the responsibility for administering and enforcing the GCA to the Director of ATF (“Director”), subject to the direction of the Attorney General and the Deputy Attorney General. *See* 28 U.S.C. 599A(b)(1), (c)(1); 28 CFR 0.130(a)(1)–(2); Treas. Order No. 221(2)(a), (d), 37 FR 11696–97 (June 10, 1972).² Accordingly, the Attorney General and ATF have promulgated regulations to implement the GCA in 27 CFR part 478.

A. Statutory and regulatory provisions

Section 926A of the GCA provides that: “Notwithstanding any other provision of any law or any rule or regulation of a state or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm *shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm* if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: Provided, That in the case of a

¹ Some GCA provisions still refer to the “Secretary of the Treasury.” However, the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135, transferred the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(c)(1). Thus, for ease of reference, this proposed rule refers to the Attorney General where relevant.

² In Attorney General Order Number 6353–2025, the Attorney General delegated authority to the Director to issue regulations pertaining to ATF’s jurisdiction on those topics, including under the National Firearms Act, GCA, and Title XI of the Organized Crime Control Act. ATF’s jurisdiction also includes those portions of sec. 38 of the Arms Export Control Act pertaining to permanently importing defense articles and services and the Contraband Cigarette Trafficking Act.

vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console." (Emphasis added).

The implementing regulation at 27 CFR 478.38 contains substantively identical language. Neither the statute nor the regulation addresses transit when a person is between modes of transportation or when a firearm or ammunition is no longer in "transport" due to incidental activities arising during the person's continuous transport. The Department has previously advised that section 926A applies when (1) a person is traveling from somewhere he lawfully may possess and carry a firearm; (2) en route to the airport when the firearm is unloaded and not accessible from the passenger compartment of his car; (3) the person transports the firearm directly from his vehicle to the airline check-in desk without any interruption in the transportation; and (4) while carrying the firearm to the check-in desk, it is unloaded and in a locked container. *See* Letter to the Honorable Don Young, U.S. House of Representatives, from William E. Moschella, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice (Feb. 18, 2005). However, ATF has not codified this advice, nor has ATF extended section 926A to delays or a break in travel. ATF also has not codified how section 926A applies to the transportation of accessories, such as ammunition magazines, that would ordinarily be transferred with the firearm.

B. Justification for the rule

Under two independent theories, ATF believes that section 926A properly encompasses some transportation of a firearm outside of a transporting vehicle.

First, ATF believes that this is the best reading of the statute's plain text. Section 926A provides that a person may transport an unloaded firearm if "neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle." 18 U.S.C. 926A. These provisions may be read independently: a requirement that firearms transported in vehicles not be "directly

accessible from the passenger compartment” and a second requirement that firearms carried by means other than vehicles not be “readily accessible.” *See Ass’n of N.J. Rifle & Pistol Clubs Inc. v. Port Auth. of N.Y. & N.J.*, 730 F.3d 252, 258–59 (3d Cir. 2013) (Jordan, J., concurring in the judgment).

Legal and textual arguments support this conclusion. A firearm that is not “directly accessible from the passenger compartment”—primarily, one stored in the vehicle trunk or truck bed—would already not be “readily accessible” because it would not be accessible for immediate use as a weapon. *See Henderson v. United States*, 687 A.2d 918, 922 (D.C. 1996) (holding that a firearm was not “on or about” the defendant’s person when it was located in the trunk of his car for purposes of a D.C. Code violation); *id.* at 922 n.9 (explaining that “the clear weight of authority in other jurisdictions” holds that a firearm in a trunk is not readily accessible). If “readily accessible” modified only vehicular carry, it would be surplusage because it would already be covered by the requirement that the firearm and ammunition be stored outside the vehicle compartment (or in a locked container other than the glove compartment or console). The statute also repeats the word “is,” which gives some textual indication that these two disjunctive provisions are meant to be separate. *See Ass’n. of N.J. Rifle & Pistol Clubs Inc.*, 730 F.3d at 259 (Jordan, J., concurring). The statute also connects the vehicle to “directly accessible” when it states that the firearm may not be “directly accessible from the passenger compartment of *such* transporting vehicle.” 18 U.S.C. 926A. Relatedly, reading these provisions independently gives “or” its usual disjunctive application, *i.e.*, signaling separate meanings. And while the term “can sometimes introduce an appositive—a word or phrase that is synonymous with what precedes it . . . —its ordinary use is almost always disjunctive, that is, the words it connects are to be given separate meanings.” *United States v. Woods*, 571 U.S. 31, 45 (2013) (internal quotation marks omitted); *see also Loughrin v. United States*, 573 U.S. 351, 357 (2014) (“As we have recognized, that term’s ordinary use is almost always disjunctive, that is, the words it

connects are to be given separate meanings. Yet [Petitioner] would have us construe the two entirely distinct statutory phrases that the word ‘or’ joins as containing an identical element. And in doing so, his interpretation would make [the statute’s] second clause a mere subset of its first . . . [This] construction thus effectively reads ‘or’ to mean ‘including’—a definition foreign to any dictionary we know of.”) (internal citation and quotation marks omitted).

Nor does ATF read the proviso as altering the above analysis, in that the “Provided” language specifically references the clause directly preceding it, i.e., “in the case of a vehicle,” and clarifies the unusual situation where a vehicle has a glove compartment or console but no trunk or truck bed. *See Las Vegas Sun, Inc. v. Adelson*, 147 F. 4th 1103, 1119 (9th Cir. 2025) (“As an initial matter, it is a well-established canon of construction that ‘a proviso usually is construed to apply to the provision or clause immediately preceding it.’” (quoting *Pacificorp v. Bonneville Power Admin.*, 856 F.2d 94, 97 (9th Cir. 1988)) (quoting 2A Sutherland on Statutes and Statutory Construction § 47.33, at p.245 (4th ed. 1984))); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: the Interpretation of Legal Texts* at 154 (2012) (stating that, under the “proviso canon,” a “proviso conditions the principal matter that it qualifies—almost always the matter immediately preceding”).

Second, even assuming *arguendo* that these arguments are wrong—that the statute governs “only transportation of a firearm in a vehicle,” *Ass’n. of N.J. Rifle & Pistol Clubs Inc.*, 730 F.3d at 255 (majority op.)—ATF still believes that some non-vehicle transportation would be authorized under section 926A as incidental to the power to transport firearms in vehicles. The power to do an act carries with it incidental powers necessary to the act. For example, the right to keep and bear arms includes the right to purchase arms and ammunition. *See Andrews v. State*, 50 Tenn. 165, 178 (1871). A right to have a lawyer under the Sixth Amendment includes the right to pay that lawyer. *See Luis v. United States*, 578 U.S. 5, 27 (2016) (Thomas, J., concurring in the judgment). As Justice Thomas explained in

Luis, “Constitutional rights thus implicitly protect those closely related acts necessary to their exercise.” *Id.* at 26.

This statement is true not just for constitutional rights, but for statutory rights as well. If federal law grants a right to do an act, it also grants the right to do those incidental acts necessary to make one’s exercise of the right effective. Here, federal law already permits the interstate transportation of firearms in vehicles and aboard commercial aircraft, provided the firearms and ammunition are unloaded and not readily accessible or directly accessible from the passenger compartment of the transporting vehicle (with a special rule for vehicles without a separate compartment). 18 U.S.C. 926A (all vehicles); *see also* 49 U.S.C. 46505(d)(3) (aircraft baggage); 18 U.S.C. 922(e) (regulating firearms aboard all common or contract carriers). If section 926A covers transporting a firearm in the trunk of a motor vehicle and the baggage hold of a commercial aircraft, there are strong arguments that section 926A also covers transferring the firearm between the car and the airplane. *See* Stephen P. Halbrook, *Firearms Law Deskbook*, Section 4:9 (Oct. 2025 update) (In discussing section 926A, “[t]he mode of transportation is not limited to any specific type and may encompass motor vehicles, airlines, trains, and other forms. Activities incidental to transportation, such as checking baggage with firearms at airports, stopping for fuel and eating, and similar activities are protected.”). ATF, thus, seeks comment on this understanding.

Courts attempting to determine the scope of section 926A have excessively narrowed its application. In *Revell v. Port Authority of New York and New Jersey*, the plaintiff, a Utah resident flying through New Jersey to Pennsylvania in 2005, missed his connecting flight and was forced to collect his baggage and spend the night in a hotel. 598 F.3d 128, 130–31 (3d Cir. 2010). The following morning, after declaring the unloaded firearm, he was arrested for illegal possession of a handgun and ammunition under New Jersey law. *Id.* at 131. Revell sued the arresting agency, Port Authority of New York and New Jersey, and the arresting

officer under 42 U.S.C. 1983 alleging violations of his Fourth and Fourteenth Amendment rights and appealed the subsequent district court's decisions against him. *Id.* at 132–34. Although the court recognized that Revell had been placed in “a difficult predicament through no fault of his own” and had notified the airline about the firearm, the court found Revell’s actions were beyond the scope of section 926A because “the gun and ammunition were readily accessible to Revell during his stay in New Jersey.” *Id.* at 136–37. The court further suggested that “[s]tranded” gun owners like Revell also had the option to go to airport law enforcement or airport personnel before retrieving their luggage to request that they hold their firearms overnight. *Id.* at 137–38. Such options, however, are not ordinarily available. Airlines generally refuse to accept baggage more than a few hours before a flight,³ and airport law enforcement does not customarily hold firearms, even for delayed passengers. In fact, the court in *Revell* recognizes that the idea to go to airport law enforcement was merely a “suggestion” and “this suggestion leaves unanswered the question of what the gun owner should do if the law enforcement officers decline to assist him.” *Id.* at 138 n.18.

In a companion case, *Ass’n of New Jersey Rifle & Pistol Clubs Inc.*, *supra*, the Association sought injunctive relief pursuant to 42 U.S.C. 1983 to enjoin the Port Authority of New York and New Jersey from enforcing certain New Jersey statutes that prohibit possession of a firearm without a permit and possession of certain ammunition against non-resident members of the Association who are entitled to transport firearms through New Jersey pursuant to 18 U.S.C. 926A. 730 F.3d at 253. The Third Circuit affirmed the district court’s denial of relief and held that “the statute protects only transportation of a firearm in a

³ American Airlines Check-in and Arrival, AMERICAN AIRLINES, <https://www.aa.com/i18n/travel-info/check-in-and-arrival.jsp> [<https://perma.cc/89HA-78C6>] (listing airports with checked bag limits for more than four hours, six hours, and eight hours); Delta Check-In Times at U.S. Airports, DELTA, <https://www.delta.com/us/en/check-in-security/check-in-time-requirements/domestic-check-in#:~:text=All%20customers%20are%20required%20to,prior%20to%20scheduled%20departure%20time> [<https://perma.cc/FX6A-NH83>] (stating Delta will not accept baggage at the airport more than six hours prior to the scheduled departure time).

vehicle” and thus “an ambulatory plaintiff who intends to transit through Newark Airport is outside the coverage of the statute.” *Id.* at 255.

The *Revell* and *Ass’n of N.J. Rifle & Pistol Clubs* opinions cited above create illogical and unintended restrictions on a citizen’s right to transport firearms interstate in the Third Circuit. The power to transport firearms in a continuous interstate journey via automobiles and aircraft also includes the incidental power to transit the firearm from one mode of transportation to the next. Indeed, individuals may find themselves transiting multiple vehicles during an interstate trip.

Take, for example, persons traveling by car from Maine, which generally does not require a permit to carry or possess firearms, to an airport in Massachusetts, a state requiring such permits, and then flying to West Virginia, where a permit is generally not required. It is clear that during any continuous travel by car, an individual meeting the conditions described would fall within the ambit of section 926A. It is equally clear that 18 U.S.C. 922(e) and 49 U.S.C. 46505 authorize passengers to transport their firearms aboard commercial aircraft, provided certain conditions are met. But under Third Circuit jurisprudence, section 926A seemingly offers no protection if a person lands at an airport outside their jurisdiction of origin, where they cannot possess or carry a firearm, but is delayed from boarding their flight to their ultimate destination until the next day; this person is without protection under 926A from the time he exits the airport until the next day when he checks the firearm in locked baggage to the airline in compliance with section 922(e). Congress sought to assure the right of individuals to travel in and between states with a firearm in passing section 926A; it is doubtful that Congress intended to open a window of criminal liability for travelers stranded through no fault of their own.

Similarly, individuals could be temporarily stranded because of vehicle problems. A person whose car breaks down or is involved in a car accident may have a need to transport a firearm from the broken-down vehicle to a new vehicle that is functioning (e.g., a rental).

Again, the best reading of section 926A—even a reading limited to vehicular carry—is that the power to travel interstate includes incidental acts that are reasonably necessary to facilitate that travel. These acts include stopping for fuel or rest or picking up or discharging passengers; otherwise, the statute would ignore the realities of interstate travel and protect only those fortunate enough to have an interstate journey that required no refueling or rest. Similarly, the power to transport firearms and ammunition includes incidental acts, such as the power to transport ammunition magazines that feed the ammunition into the firearm.

The doctrine of constitutional avoidance also supports this conclusion. Both the Third Circuit decisions narrowing section 926A were decided before *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), where the Supreme Court specifically recognized the Second Amendment’s protection to firearms possession outside of the home. While neither of the above opinions addressed the Second Amendment, their interpretation of section 926A may not comport with the Supreme Court’s precedent on the Second Amendment, including *Bruen*’s recognition that the right extends to publicly carrying firearms for self-defense. If individuals have a right to carry loaded, accessible firearms for self-defense at their places of origin and destination, it necessarily follows that they have, at a minimum, a right to transport unloaded firearms for self-defense and other lawful purposes at their place of destination. An excessively narrow interpretation of section 926A would not protect travelers from state or local laws that infringe on their right to bear arms. *See United States v. Rahimi*, 602 U.S. 680, 692 (2024) (“Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding.”); *cf. Higbie v. James*, 795 F. Supp. 3d 307, 342–343 (N.D.N.Y. 2025) (holding that New York cannot exclude nonresidents from applying for a carry license in New York). As one commentator (who shares the *Bruen* dissent’s restrictive understanding of the right to bear arms in public) explains, “the general rule was that the law must be flexible enough to allow individuals some means to transport their firearms for

lawful purposes, especially during travels from one destination to another.” Patrick J. Charles, *The Second Amendment and the Basic Right to Transport Firearms for Lawful Purposes*, 13 *Charleston L. Rev.* 125, 150 (2018).

The proposed rule, thus, responds to the lack of clarity surrounding the interstate transportation of firearms and aims to prevent law-abiding persons from facing travel delays or arrest despite complying with ATF’s reading of section 926A. *See Torraco v. Port Auth. of N.Y. & N.J.*, 539 F. Supp. 2d 632 (E.D.N.Y. 2008); *Revell v. Port Auth. of N.Y. & N.J.*, 598 F.3d 128 (3d Cir. 2010). Litigation in the wake of these instances has resulted in an overly narrow and burdensome application of the statute.

II. Proposed Rule

Based on current case law addressing section 926A regarding the right of a citizen to travel interstate with a firearm as well as cases recognizing that the Second Amendment, in part, secures the right to bear arms in public, ATF believes it is imperative to clarify the intended scope of section 926A in the accompanying regulation. Accordingly, the proposed rule amends 27 CFR 478.38 to clarify that incidental activities that are reasonably necessary to a person’s interstate transportation are considered “transport” and thus within the scope of activities protected by 18 U.S.C. 926A and 27 CFR 478.38. This would include, but not be limited to, staying in temporary lodging overnight, stopping for food, fuel, vehicle maintenance, an emergency, medical treatment, transiting between modes of transportation, or moving a firearm at the beginning of a journey from a fixed address to a vehicle for transportation or at the end of a journey from a vehicle to a fixed address. Because section 926A provides a “safe harbor” for travelers and “[a]ny regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated,” *see* E.O. 13132(4)(c), the proposed rule only protects reasonably necessary incidents of travel, such as stopping for fuel or temporary rest. The rule does not authorize, however, someone to have an extended break in

transportation, for reasons unrelated to travel, in a jurisdiction where possession of the firearm or ammunition would be prohibited.

To ensure firearms are stored or transported in a manner consistent with sections 926A or 922(e), as the case may be, the proposed rule lays out the storage provisions depending on the mode of transportation (e.g., by vehicle, by common or contract carrier) during travel. Additionally, the proposed rule addresses storage where there is an activity incidental to the original transportation that requires a break in continuous transit (e.g., an overnight stay at a hotel), and storage in a vehicle is not possible. In this scenario, the proposed rule would stipulate that the firearm must be unloaded and must be in a locked container that makes it and any ammunition not readily accessible for immediate use. This is consistent with section 926A's admonition that "during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible."

Additionally, the proposed rule would make clear that the right to transport firearms also includes the concomitant incidental right to transport accessories and attachments of such firearms, such as ammunition, sights, and magazines. ATF believes this is the best interpretation of section 926A. Section 926A would not serve its intended purpose if state and local governments could indirectly restrict the transportation of firearms by enforcing transportation restrictions of items that are constituent parts and accessories of the firearms being transported, including ammunition and firearm magazines. Indeed, section 926A already implies that ammunition is covered by the entitlement to transport firearms when it states, "and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: Provided, that in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console." It would be a strange interpretation if federal law authorized the

transportation of the firearm and the ammunition, but not the magazine that would feed the ammunition into the firearm. And the same impracticalities would apply to other accessories such as firearm sights.

The incidental power granted by this section would only apply to the transportation of lawfully possessed accessories. Accessories would not fall within the incidental protection offered by section 926A and this regulation if they were illegal under federal law (e.g., an unregistered machinegun conversion device, *see* 18 U.S.C. 922(o)), or if they were illegal at the place of origin or destination. For example, a person could not claim protection by transporting a magazine over ten rounds of ammunition if his place of destination forbade such accessories.

Finally, this rule would include a severability paragraph in 27 CFR 478.38. Because the full scope of a person's incidental power to transport firearms, ammunition, and accessories in interstate commerce has not been elucidated through judicial review, the severability paragraph would provide that any invalid part of the regulation or any invalid application of the regulation should be severed and the remainder of the regulation would not be affected. This inclusion of the severability paragraph in section 478.38 should not be construed to suggest that other regulations in part 478 are inseverable. ATF has included (or intends to include) a severability discussion in the preamble of other proposed rules. The explicit severability paragraph in this section should not create a negative severability inference for any other rule or regulation.

III. Statutory and Executive Order Review

A. Executive Orders 12866 and 13563

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits.

Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of agencies quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting public flexibility.

This rule proposes to amend 27 CFR 478.38 to clarify the scope of 18 U.S.C. 926A in order to make clear that it covers the activities and breaks that are incidental to the original transportation and decreases the likelihood that a person traveling with their firearm or ammunition interstate will be charged for violating state firearm laws.

The Office of Management and Budget (“OMB”) has determined that this rule would not be a “significant regulatory action” under Executive Order 12866. This rulemaking provides qualitative benefits to the public by clarifying how to comply with statutory provisions and existing standards on transporting firearms and ammunition interstate. However, ATF does not have sufficient information to calculate quantifiable savings. Therefore, ATF requests more information from the public regarding the economic effects that this rulemaking may have on the public and the regulated industries.

B. Executive Order 14192

Executive Order 14192 (Unleashing Prosperity Through Deregulation) requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed or revised when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation that qualifies as an Executive Order 14192 regulatory action (defined in OMB Memorandum M-25-20 as a final significant regulatory action under section 3(f) of Executive Order 12866 that imposes total costs greater than zero). In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that any new incremental costs associated with such new regulations must, to the extent permitted by law, also be offset by eliminating existing costs associated with at least ten prior regulations. However, this proposed rule would not be an Executive Order 14192 regulatory action because it is not a significant regulatory action as defined by Executive Order 12866 and it would not impose

total costs greater than zero. In addition, ATF expects this rule, if finalized as proposed, to qualify as an Executive Order 14192 deregulatory action (defined in OMB Memorandum M-25-20 as a final action that imposes total costs less than zero).

C. Executive Order 14294

Executive Order 14294 (Fighting Overcriminalization in Federal Regulations) requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. This proposed rule would not create a criminal regulatory offense and is thus exempt from Executive Order 14294 requirements.

D. Executive Order 13132

ATF has concluded that this rulemaking may have some federalism implications as provided in Executive Order 13132 (Federalism) because it implements 18 U.S.C. 926A's statutory preemption provision, which creates a safe harbor for individuals transporting their firearm for a lawful purpose from any place where they may lawfully possess and carry such firearm to any other place they may lawfully possess and carry such firearm regardless of any other provision of law or regulation of a state or any political subdivision. Nevertheless, this proposed rule abides by the principle of section 4(c) of Executive Order 13132, which states that "[a]ny regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated." The proposed rule protects incidental activities that are reasonably necessary to a person's transport—for example, as stated above, food, fueling, lodging, an emergency, or medical treatment, or an unscheduled overnight stop due to airline or weather disruptions—consistent with section 926A's safe harbor provision.

ATF believes that rule would restrict preemption of state law to the minimum level necessary to achieve the objectives of section 926A as described above and that it would not

impose a financial cost to state or local agencies. Further, ATF anticipates that this rule would provide qualitative benefits to the public by providing the best reading of the federal provisions and clarifying how individuals may lawfully transport their firearms and ammunition interstate. However, ATF recognizes that some states may have more restrictive laws that could be impacted by this rule, but ATF does not have sufficient information to assess the scope of state regulation or the costs on states that could be impacted. Therefore, ATF is soliciting comments from state and local governments on any potential preemption impacts stemming from ATF's proposed interpretation of section 926A's safe harbor provision.

ATF notes that it had an opportunity to inform some state officials of this proposed rule during a Federal Bureau of Investigation Criminal Justice Information Service System Officers meeting and encouraged them to comment on any potential federalism impacts that the rule might have on states. One state representative commented that section 926A should extend to overnight breaks in travel to accommodate rest breaks. ATF agreed and has included overnight breaks in this proposed rule.

E. Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform).

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, agencies are required to conduct a regulatory flexibility analysis of any proposed rule subject to notice-and-comment rulemaking requirements unless the agency head certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Small entities include certain small businesses, small not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Director certifies, after consideration, that this proposed rule would not have a significant economic impact on a substantial number of small entities because it would not impose any additional costs and only clarifies the provisions of 18 U.S.C. 926A, which concern the rights of individuals who are lawfully transporting firearms and ammunition interstate.

G. Unfunded Mandates Reform Act of 1995

This proposed rule does not include a federal mandate that might result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it would not significantly or uniquely affect small governments. Therefore, ATF has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (“PRA”), 44 U.S.C. 3501–3521, agencies are required to submit to OMB, for review and approval, any information collection requirements a rule creates or any impacts it has on existing information collections. An information collection includes any reporting, record-keeping, monitoring, posting, labeling, or other similar actions an agency requires of the public. *See* 5 CFR 1320.3(c). This proposed rule would not create any new information collection requirements or impact any existing ones covered by the PRA.

I. Congressional Review Act

This proposed rule would not be a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

IV. Public Participation

A. Comments sought

ATF requests comments on the proposed rule from all interested persons. ATF specifically requests comments on the clarity of this proposed rule and how it may be made

easier to understand. In addition, ATF requests comments on the costs or benefits of the proposed rule and on the appropriate methodology and data for calculating those costs and benefits.

All comments must reference this document's RIN 1140-AA73 and, if handwritten, must be legible. If submitting by mail, you must also include your complete first and last name and contact information. If submitting a comment through the federal e-rulemaking portal, as described in section IV.C of this preamble, you should carefully review and follow the website's instructions on submitting comments. Whether you submit comments online or by mail, ATF will post them online. If submitting online as an individual, any information you provide in the online fields for city, state, zip code, and phone will not be publicly viewable when ATF publishes the comment on <https://www.regulations.gov>. However, if you include such PII in the body of your online comment, it may be posted and viewable online. Similarly, if you submit a written comment with PII in the body of the comment, it may be posted and viewable online. Therefore, all commenters should review section IV.B of this preamble, "Confidentiality," regarding how to submit PII if you do not want it published online. ATF may not consider, or respond to, comments that do not meet these requirements or comments containing excessive profanity. ATF will retain comments containing excessive profanity as part of this rulemaking's administrative record, but will not publish such documents on <https://www.regulations.gov>. ATF will treat all comments as originals and will not acknowledge receipt of comments. In addition, if ATF cannot read your comment due to handwriting or technical difficulties and cannot contact you for clarification, ATF may not be able to consider your comment.

ATF will carefully consider all comments, as appropriate, received on or before the closing date.

B. Confidentiality

ATF will make all comments meeting the requirements of this section, whether submitted electronically or on paper, and except as provided below, available for public viewing on the internet through the federal e-rulemaking portal, and subject to the Freedom of Information Act (5 U.S.C. 552). Commenters who submit by mail and who do not want their name or other PII posted on the internet should submit their comments with a separate cover sheet containing their PII. The separate cover sheet should be marked with “CUI//PRVCY” at the top to identify it as protected PII under the Privacy Act. Both the cover sheet and comment must reference this RIN 1140-AA73. For comments submitted by mail, information contained on the cover sheet will not appear when posted on the internet, but any PII that appears within the body of a comment will not be redacted by ATF and it may appear on the internet. Similarly, commenters who submit through the federal e-rulemaking portal and who do not want any of their PII posted on the internet should omit such PII from the body of their comment and any uploaded attachments. However, PII entered into the online fields designated for name, email, and other contact information will not be posted or viewable online.

A commenter may submit to ATF information identified as proprietary or confidential business information by mail. To request that ATF handle this information as controlled unclassified information (“CUI”), the commenter must place any portion of a comment that is proprietary or confidential business information under law or regulation on pages separate from the balance of the comment, with each page prominently marked “CUI//PROPIN” at the top of the page.

ATF will not make proprietary or confidential business information submitted in compliance with these instructions available when disclosing the comments that it receives, but will disclose that the commenter provided proprietary or confidential business information that ATF is holding in a separate file to which the public does not have access. If

ATF receives a request to examine or copy this information, it will treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). In addition, ATF will disclose such proprietary or confidential business information to the extent required by other legal process.

C. Submitting comments

Submit comments using either of the two methods described below (but do not submit the same comment multiple times or by more than one method). Hand-delivered comments will not be accepted.

- *Federal e-rulemaking portal:* ATF recommends that you submit your comments to ATF via the federal e-rulemaking portal at <https://www.regulations.gov> and follow the instructions. Comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that is provided after you have successfully uploaded your comment.
- *Mail:* Send written comments to the address listed in the ADDRESSES section of this document. Written comments must appear in minimum 12-point font size and include the commenter's first and last name and full mailing address and may be of any length. See also section IV.B of this preamble, "Confidentiality."

D. Request for hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this proposed rule and the comments received in response to it are available through the federal e-rulemaking portal, at <https://www.regulations.gov> (search for RIN 1140-AA73).

List of subjects in 27 CFR part 478

Administrative practice and procedure, Arms and munitions, Exports, Freight, Imports, Intergovernmental relations, Law enforcement officers, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

For the reasons discussed in the preamble, ATF proposes to amend 27 CFR part 478 as follows:

PART 478—COMMERCE IN FIREARMS AND AMMUNITION

1. The authority citation for 27 CFR part 478 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921-931; 44 U.S.C. 3504(h).

2. Revise § 478.38, including its heading, to read as follows:

§ 478.38 Transporting firearms, ammunition, and accessories between states.

(a) Notwithstanding any other provision of any law or any rule or regulation of a state or any political subdivision thereof, any person who is not otherwise prohibited by chapter 44 of title 18, United States Code, from transporting, shipping, or receiving a firearm is entitled to transport a firearm for any lawful purpose from any place where such person may lawfully possess and carry such firearm to any other place where such person may lawfully possess and carry such firearm, consistent with paragraph (b) of this section. The right to transport firearms under this section also includes the right to transport ammunition and accessories for the firearm consistent with paragraph (b) of this section. Protected transportation under this section includes reasonably necessary activities incidental to interstate travel, such as staying in temporary lodging overnight, transiting between modes of transportation, stopping for

food, fuel, vehicle maintenance, an emergency, or medical treatment, picking up or discharging passengers, moving a firearm at the beginning of a journey from a fixed address to a vehicle for transportation or at the end of a journey from a vehicle to a fixed address, and any other activity incidental to the original transportation.

(b) When transporting firearms under this section:

(1) Firearms and ammunition in a vehicle must comply with the conditions set forth in 18 U.S.C. 926A. When a person is transporting a firearm in a vehicle, the firearm must be unloaded, and neither the firearm nor any ammunition being transported may be directly accessible from the passenger compartment of the vehicle. If the vehicle is without a compartment separate from the driver's compartment, the firearm or ammunition must be contained in a locked container other than the glove compartment or console.

(2) If the journey includes transporting firearms or ammunition by a common or contract carrier, persons must also comply with 18 U.S.C. 922(e), 27 CFR 478.31, and, for travel aboard commercial aircraft, 49 U.S.C. 46505(d)(3).

(3) If the journey requires a break in continuous transit (*e.g.*, an overnight stay in a hotel) that is reasonable in the circumstances and it is not possible to store the firearm in the vehicle, the person must store the unloaded firearm and ammunition in a locked container so they are not readily accessible for immediate use.

(4) A person switching between vehicles or modes of transportation shall keep the firearm unloaded and keep it and any ammunition in a locked container so they are not readily accessible for immediate use.

(5) A person does not lose 18 U.S.C. 926A's in-transit protection by presenting the firearm or ammunition for inspection when required by a common carrier, the Transportation Security Administration, or U.S. Customs and Border Protection.

(6) Individuals also have the right to transport attachments, accessories, or other instruments for the firearms they are transporting, including, but not limited to, ammunition

(regardless of bullet type), scopes, sights, optics, stocks, grips, stabilizing braces, mounts, weapon-mounted lights, multifunction aiming lights, magazines, clips, feed strips, any other ammunition feeding device, holsters, slings, and firearm cleaning kits. Any such item the person transports must be lawful under federal law and must also be lawful in both the place where travel began and at the destination. To have the transportation rights conferred by this paragraph and by 18 U.S.C. 926A for an attachment, accessory, or other instrument, any such item being transported with the firearm must be transported in the manner provided by paragraph (b)(1), (b)(3), or (b)(4), as applicable.

(c) If any portion of this section, or its application to any person or any circumstance, is held invalid, the remainder of this section and the application of such portion to other persons not similarly situated or to other circumstances shall not be affected. The existence of an explicit severability clause in this paragraph shall not be construed as an indication that any other section in part 478, portion of such sections, or application of such sections or portions to any person or in any circumstance are not similarly severable.

Robert Cekada,

Director.

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