note that section 343(a) of the Trade Act of 2002, Public Law 107–210, formerly set out as a note to 19 U.S.C. 2071, is now codified as amended at 19 U.S.C. 1415. Additionally, CBP revised the specific authority citation for 19 CFR 103.31a and added a specific authority citation for 19 CFR 122.48b to note the enactment of section 1951 of the FAA Reauthorization Act of 2018, Public Law 115–254, codified as a note to 49 U.S.C. 44901. CBP did not intend to revise any other portions of the authority citations for 19 CFR parts 103 or 122, as indicated by CBP's use of five asterisks before and after the aforementioned specific authority citation revisions. *See* 90 FR at 52843.

Following the publication of the Enhanced ACAS IFR, the specific authority citations for 19 CFR 103.31a and 19 CFR 122.48b were revised in accordance with CBP's intent; however, all of the other specific authority citations that existed in 19 CFR parts 103 and 122 prior to November 21, 2025, the effective date of the Enhanced ACAS IFR, were removed. This correcting amendment corrects this error by restoring the specific authority citations of 19 CFR parts 103 and 122 that existed prior to November 21, 2025. This correcting amendment does not modify any requirements promulgated through the Enhanced ACAS IFR; further public procedure prior to making these corrections is unnecessary. *See* 5 U.S.C. 553(b)(B), (d).

Therefore, in accordance with the Enhanced ACAS IFR and 19 CFR 0.2(a), DHS is issuing this correcting amendment.

List of Subjects

19 CFR Part 103

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Law enforcement, Privacy, Reporting and recordkeeping requirements.

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Alcohol and alcoholic beverages, Cigars and cigarettes, Cuba, Customs duties and inspection, Drug traffic control, Freight, Penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons stated in the preamble, 19 CFR parts 103 and 122 are corrected by making the following correcting amendments:

PART 103—AVAILABILITY OF INFORMATION

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431;

Section 103.31a also issued under 19 U.S.C. 2071 note, 6 U.S.C. 943, 19 U.S.C. 1415, and 49 U.S.C. 44901 note;

Section 103.33 also issued under 19 U.S.C. 1628;

Section 103.34 also issued under 18 U.S.C. 1905.

PART 122—AIR COMMERCE REGULATIONS

■ 2. The authority citation for part 122 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1415, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

Section 122.22 is also issued under 46 U.S.C. 60105.

Section 122.48b also issued under 49 U.S.C. 44901 note.

Section 122.49a also issued under 8 U.S.C. 1101, 1221, 19 U.S.C. 1431, 49 U.S.C. 44909.

Section 122.49b also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114, 44909.

Section 122.49c also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114, 44909.

Section 122.49d also issued under 49 U.S.C. 44909(c)(3).

Section 122.75a also issued under 8 U.S.C. 1221, 19 U.S.C. 1431.

Section 122.75b also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114.

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs.

[FR Doc. 2026–01167 Filed 1–21–26; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 478

[Docket No. ATF–2026–0034; ATF No. 2025R–54T]

RIN 1140–AB03

Revising Definition of ''Unlawful User of or Addicted to Controlled Substance''

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

ACTION: Interim final rule; request for comments.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (''ATF'') is amending Department of Justice (''Department'') regulations to update the definition of ''unlawful user of or addicted to any controlled substance,'' a category of persons who may not possess firearms under federal law. This definition was established in 1996 to facilitate operation of the National Instant Criminal Background Check System. Since then, court decisions and ATF internal guidance have evolved to include recurring use as a factor. As a result, ATF is aligning the definition with the best statutory understanding, as informed by judicial decisions.

DATES: This interim final rule (''IFR'') is effective on January 22, 2026. Comments must be submitted in writing, and must be submitted on or before (or, if mailed, must be postmarked on or before) June 30, 2026. 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. ATF will publish a final rule in the **Federal Register** adopting the IFR as final with any changes in response to public comments or adopting the IFR as final without change.

ADDRESSES: You may submit comments, identified by RIN 1140–AB03, 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: RIN 1140–AB03.*

Instructions: All submissions must include the agency name and number (RIN 1140–AB03) for this IFR. ATF may post all properly completed comments it receives 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 or in 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. You may find a summary of this rule 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 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 Department and ATF have promulgated regulations to implement the GCA in 27 CFR part 478.

The GCA, in 18 U.S.C. 922(g)(3), states that it is unlawful for any person who is an unlawful user of or addicted to any controlled substance (as defined by section 102 of the Controlled Substances Act at 21 U.S.C. 802) to ship, transport, possess, or receive any firearm that has moved through interstate or foreign commerce. In other words, persons who are unlawful users of or addicted to a controlled substance constitute one category of what are commonly referred to as ''prohibited'' persons in the context of firearms. The plain language of the text indicates that the person must be a current unlawful user of a controlled substance, contemporaneous to possessing the firearm.

After the GCA was passed in 1968, federal courts addressed the meaning of ''unlawful user'' and recognized the distinction between ''use'' and ''addiction.'' One court observed that ''the statute prohibits a person who is *either* an unlawful user of *or* addicted to a controlled substance from purchasing firearms.'' [3] Another court noted that if the defendant's use of heroin had been infrequent or in the distant past, the term ''unlawful user'' would be subject to a vagueness challenge.[4]

ATF proposed a regulatory definition of unlawful user, together with other regulatory definitions on the prohibited person categories, in 1996 to facilitate operating the National Instant Criminal Background Check System (''NICS''), as required by the Brady Handgun Violence Prevention Act, Public Law 103–159 (1993).[5] The definition of ''unlawful user'' utilized definitions from both the Americans with Disabilities Act, Public Law 101–336 (1990); and the Controlled Substances Act, Public Law 91–513 (1970),[6] and the proposed rule included some of the current regulations' factual examples that give rise to an inference of being an unlawful user.[7]

Thereafter, in June 1997, ATF published implementing regulations at 27 CFR 478.11, further defining the term ''unlawful user of or addicted to any controlled substance'' to provide more clarity.[8] The regulatory definition first clarified that the two prongs of the definition consist of (1) persons who use a controlled substance and have ''lost the power of self-control with reference to the use'' of the substance, and (2) persons who are ''current user[s]'' of a controlled substance ''in a manner other than as prescribed by a licensed physician.'' The definition then clarified the temporal component by stating that ''use'' of the controlled substance is not limited to a particular day or within a matter of days or weeks before shipping, transporting, receiving, or possessing a firearm, but rather that ''the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct'' and that the person can be an unlawful current user even if the substance is ''not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm.'' The regulation further clarified that inferences of ''current use'' may arise from ''evidence of a recent use or possession'' of the substance or ''a pattern of use or possession that reasonably covers the present time'' and provided examples from which a person may draw an inference of current use, including:

- a conviction for use or possession within the past year;
- multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year;
- a drug test finding the person used a controlled substance unlawfully, provided the test was within the past year; or
- for current or former Armed Forces members, a recent disciplinary or other administrative action based on confirmed drug use (including a court-martial conviction, non-judicial punishment, or administrative discharge based on drug use or rehabilitation failure).

The 1997 final rule added factual examples supporting an inference of current use, as recommended by certain Department components other than ATF, as well as the Department of Defense. These additions included inferences based on a positive drug test within the past year and military nonjudicial or administrative actions based on drug use [9]—both of which could result from a single unlawful use.

[1] Some GCA provisions still refer to the ''Secretary of the Treasury.'' However, the Homeland Security Act of 2002, Public Law 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 IFR 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 matters within ATF's jurisdiction, including under the GCA, National Firearms Act, and Title XI of the Organized Crime Control Act. ATF's jurisdiction also includes the Arms Export Control Act and the Contraband Cigarette Trafficking Act.

[3] *United States* v. *Corona,* 849 F.2d 562, 563 n.2 (11th Cir. 1988) (emphases in original).

[4] *United States* v. *Ocegueda,* 564 F.2d 1363, 1366 (9th Cir. 1977).

[5] *See* Definitions for the Categories of Persons Prohibited From Receiving Firearms (95R–051P), 61 FR 47095, 47096, 47098 (Sep. 6, 1996) (proposed rule).

[6] *Id.* at 47096 (explaining that the proposed definition of ''unlawful user of or addicted to any controlled substance'' is consistent with similar terms used in 18 U.S.C. 802, 42 U.S.C. 12101–12213, and 21 U.S.C. 802).

[7] *Id.* at 47099 (''An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, *e.g.,* a conviction for use or possession of a controlled substance within the past year, or multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year.'').

[8] *See* Definitions for the Categories of Persons Prohibited From Receiving Firearms (95R–051P), 62 FR 34634 (June 27, 1997) (''1997 final rule'').

[9] 1997 final rule at 34636.

The regulatory definition thus described what ATF at the time understood the term ''unlawful user'' to mean and, as relevant here, it included an understanding that a single incident of unlawful use could make a person an ''unlawful user.''

Thereafter, without exception, federal courts in the early 2000s agreed that, to put defendants on notice that they are unlawful users pursuant to the GCA, ''one must be an unlawful user at or about the time he or she possessed the firearm and that to be an unlawful user, one needed to have engaged in regular use over a period of time proximate to or contemporaneous with the possession of the firearm.'' [10] Under this analysis, federal courts consistently upheld convictions in which there was evidence that an individual used controlled substances on a regular basis, establishing a pattern of use.[11] For example, courts have upheld convictions in which the defendant admitted to smoking marijuana twice a day for many years; [12] the suspect admitted he had been using the drug in question for two years; [13] and a user-quantity amount of amphetamine was found on a table in the defendant's residence, where he lived alone, and testimony established the defendant frequently used drugs with his customers.[14]

Courts also issued decisions in the early 2000s regarding the other end of the unlawful-user boundary. They held that an individual may not be convicted of violating 18 U.S.C. 922(g)(3) when the government is able to prove only a single use of a controlled substance instead of regular use.[15] For example, the Ninth Circuit held that, ''to sustain a conviction'' under section 922(g)(3), the government ''must prove . . . that the defendant took drugs with regularity, over an extended period of time, and contemporaneously with his purchase or possession of a firearm.'' [16] The Eighth Circuit noted that ''courts generally agree the law runs the risk of being unconstitutionally vague without a judicially-created temporal nexus between possessing the gun and regular drug use.'' [17] The federal circuits that have weighed in on this issue have held that the government must prove some regularity of drug use in addition to contemporaneousness to meet the statute's requirements.[18]

Since ATF published the 1997 final rule, the Federal Bureau of Investigation (''FBI''), in operating NICS, has relied on the inference examples in the regulatory definition of unlawful user. The NICS Section concluded, with ATF's concurrence, that the FBI could draw an inference of a person currently using or possessing a controlled substance from evidence of a recent incident, and that ATF's regulation indicated that the relevant time period was ''within the past 12 months.'' Based upon those historical factors, NICS examiners have, for example, found prohibited use when, within the past year, the person has had a drug conviction for using or possessing; admitted to using or possessing; had any positive drug test, or was convicted of a misdemeanor crime involving drugs.

The NICS Section also advised federal, state, local, and tribal NICS users that they could temporarily enter identifying information about individuals fitting such conditions into the NICS Indices.[19] These Indices contain information provided by federal, state, local, and tribal agencies on actions that could cause a person to be prohibited from receiving firearms under federal or state law.[20] As of December 31, 2025, there were 54,136 entries in the NICS Indices designated as ''unlawful user/addicted to controlled substance,'' out of a total of 34,036,267 active entries in the NICS Index alone (one of the three systems that make up the Indices).[21]

Under 18 U.S.C. 922(t)(1), federal firearms licensees must generally contact NICS prior to transferring a firearm to a purchaser. Based on ATF's current regulatory definition and NICS's implementing criteria, NICS may deny transfers to certain firearm purchasers based on NICS Indices entries indicating the persons admitted they used or possessed unlawful drugs a single time within the past year. In such cases, NICS notifies the licensee that the transfer is prohibited or ''denied.'' *See* 28 CFR 25.6. However, if the licensee does not receive such notification from NICS within three business days, federal law says the licensee may generally transfer the firearm to the purchaser the next day. In a situation in which NICS determines that the purchaser is prohibited after the firearm has been transferred (''delayed denial''), the FBI refers the case to ATF's Denial Enforcement and NICS Intelligence Branch (''DENI'') to potentially investigate and retrieve the firearm from the prohibited purchaser.

Since the 1997 final rule, ATF's internal practices and guidance have evolved within the boundaries established by court decisions like those described above. For example, each of ATF's field divisions, in conjunction with the local United States Attorney's Office (''USAO''), establishes referral

[10] *United States* v. *Augustin,* 376 F.3d 135, 139 (3d Cir. 2004).

[11] *See United States* v. *Burchard,* 580 F.3d 341, 352–53 (6th Cir. 2009) (testimony that defendant smoked crack on numerous occasions for one year prior to arrest for violation of section 922(g)(3)); *United States* v. *Mack,* 343 F.3d 929, 932–33 (8th Cir. 2003) (evidence of unlawful use sufficient where defendant possessed user-quantity of marijuana at the time of his arrest and arresting officers smelled marijuana, and where one month earlier defendant had confronted witness about theft of his marijuana and fired a gun into the air).

[12] *United States* v. *Jackson,* 280 F.3d 403, 406 (4th Cir. 2002).

[13] *United States* v. *Patterson,* 431 F.3d 832, 835 (5th Cir. 2005).

[14] *United States* v. *Oleson,* 310 F.3d 1085, 1090 (8th Cir. 2002).

[15] *See United States* v. *Williams,* 216 F. Supp. 2d 568, 576 (E.D. Va. 2002) (motion for judgment of acquittal must be granted where there is no evidence suggesting a pattern of use, continuous use, or prolonged use of a controlled substance on the part of the defendant); *United States* v. *Freitas,* 59 M.J. 755, 757–58 (N–M. Ct. Crim. App. 2004) (where the government proves only a single use of marijuana by service member, the record lacks an adequate factual basis to substantiate that the appellant was an ''unlawful user'' under section 923(d)(3)); *United States* v. *Herrera,* 289 F.3d 311, 323–24 (5th Cir. 2002), *rev'd en banc on other grounds,* 313 F.3d 882 (5th Cir. 2002) (irregular use of cocaine and past use of marijuana was insufficient evidence to establish that appellant was a prohibited person under section 923(g)(3)).

[16] *United States* v. *Purdy,* 264 F.3d 809, 812–13 (9th Cir. 2001).

[17] *United States* v. *Turnbull,* 349 F.3d 558, 561 (8th Cir. 2003), *cert. granted, judgment vacated on other grounds,* 543 U.S. 1099 (2005).

[18] *See e.g. United States* v. *Marceau,* 554 F.3d 24, 30–31 (1st Cir. 2009); *United States* v. *Yepez,* 456 F. App'x 52, 54–55 (2d Cir. 2012); *Augustin,* 376 F.3d at 138–39; *Jackson,* 280 F.3d at 406; *United States* v. *McCowan,* 469 F.3d 386, 392 (5th Cir. 2006); *Burchard,* 580 F.3d at 350; *United States* v. *Bennett,* 329 F.3d 769, 778 (10th Cir. 2003) (noting ''a regular and ongoing use''); *United States* v. *Edmonds,* 348 F.3d 950, 951 (11th Cir. 2003).

[19] The NICS background-check process encompasses information from the NICS Index, the National Crime Information Center, and the Interstate Identification Index. *See* 28 CFR 25.2, 25.4. The FBI, and therefore this rule, refers to these databases as the ''NICS Indices.'' The ''NICS Indices'' was originally termed the ''NICS Index.'' The NICS Index is now ''the database, to be managed by the FBI, containing information provided by federal and state agencies about persons prohibited under federal law from receiving or possessing a firearm. The NICS Index is separate and apart from the [National Crime Information Center (NCIC)] and the Interstate Identification Index (III).'' 28 CFR 25.2.

[20] FBI Criminal Justice Information Services Division (''CJIS''), *Quick Reference Information,* (Dec. 31, 2024), *https://www.fbi.gov/file-repository/cjis/download-active-entries-in-the-nics-indices-as-of-december-31-2023.pdf.*

[21] FBI CJIS, *Active Entries in the NICS Indices* (last updated Dec. 31, 2025), *https://www.fbi.gov/file-repository/cjis/active_records_in_the_nics-indices.pdf/view.* These numbers represent a snapshot in time because records are constantly moving in and out of the system as federal and state agencies add or remove records based on prohibiting criteria in 18 U.S.C. 922. The FBI NICS Section updates the metrics on a monthly basis. This section runs a report showing the total entries in the NICS Indices at that time, and which prohibited category was involved, for tracking purposes.

guidelines to reflect the USAO's current policies. Accordingly, the ATF Special Agent in Charge of each field division reviews the referral guidelines annually with the relevant USAO. In those referral guidelines, ATF states that most kinds of single ''inference of use'' denials (*i.e.,* admitted use, admitted possession, positive drug test, or a single drug arrest in the past year) should not be referred to field offices for prosecution or to retrieve a purchased firearm. This guideline also generally applies to firearms forfeiture because field divisions do not retrieve or seize firearms based on evidence of a single unlawful use. Since approximately April 2018, DENI policy has been to not refer delayed denials or standard denials based on the kinds of inferences arising from a single incident of drug use listed above. However, DENI has referred an 18 U.S.C. 922(g)(3) denial to a field office if the purchaser has a misdemeanor drug conviction within the past year or multiple drug arrests in the past five years with at least one of those arrests being in the past year.

As a result, ATF field divisions receiving NICS delayed-denial referrals based on single-use situations have often determined that, contrary to the regulatory inferences in 27 CFR 478.11, a single incident is insufficient evidence on which to pursue a violation under 18 U.S.C. 922(g)(3). In fiscal year (''FY'') 2025, NICS denied approximately 9,163 transfers under an 18 U.S.C. 922(g)(3) prohibitor due to records of drug-related incidents. Of this number, ATF did not refer 8,893 cases for further investigation. Of the ones that ATF did not refer further, 8,697 cases were standard denials (no firearm was transferred), and the remaining 196 cases were delayed denials (a firearm was transferred before the denial notification arrived from NICS). Of the cases that ATF did refer for further investigation, 120 were standard denials (*i.e.,* although the person did not receive the firearm, the person was referred for other reasons, such as repeated efforts to purchase a firearm while prohibited), and 130 were delayed denials. Table 1 shows these numbers.

TABLE 1—FY 2025 NICS DENIALS UNDER 18 U.S.C. 922(g)(3) UNLAWFUL USER PROHIBITION

Total FY 2025 NICS denials under 18 U.S.C. 922(g)(3)	Disposition	Totals	Standard denials	Delayed denials
9,163	Not referred by ATF for further action	8,893	8,697	196
	Referred by ATF for further action	250	120	130
	Overturned, cancelled, etc	29	n/a	n/a
	Total by denial type		8,817	326

Therefore, of the 9,163 cases, 8,947 (8,697 + 120 + 130 in Table 1) resulted in a person not receiving a firearm either through standard denials (8,817) or delayed denials in which ATF retrieved the firearm (120). Of the 326 cases NICS referred to ATF as delayed denials under an 18 U.S.C. 922(g)(3) prohibition, ATF pursued only 130 for further investigation, firearms forfeiture, or prosecution (which included 80 based on a single misdemeanor conviction). ATF did not pursue the remaining 196 delayed denial cases because they involved an inference based on a single use that did not involve a conviction (such as an admitted use, admitted possession, or positive drug test in the past year). Table 2 shows the inference break-down numbers for each type of denial.

TABLE 2—FY 2025 SINGLE-INCIDENT INFERENCE DENIALS BY TYPE

Inference (1x during last year)	Standard denials	Delayed denials not referred	Delayed denials referred
Admitted drug use	1,032	86	0
Admitted drug possession	853	54	0
Positive drug test	881	60	0
Misdemeanor drug use conviction	2,018	9	80
Totals by denial type	4,784	209	80
Adjusted totals by denial type *	4,284	196	80
Total inference denials	4,560		

* Totals adjusted to account for duplicates (persons with more than one category for the same incident).

As illustrated by Tables 1 and 2, and as described above regarding the number of overall NICS entries, in FY25, out of the millions of NICS checks that occurred, approximately 9,163 checks resulted in a ''denied'' response from NICS due to unlawful-user status. From among that number, approximately 4,364 persons were denied a firearm in FY25 based on the single-use inferences in ATF's regulations (approximately 4,560 single-use ''denied'' responses − 196 who got firearms (ATF did not retrieve them because the denial was based on a single-use inference) = approximately 4,364 denied firearms).

Concurrently, court decisions have continued to emphasize the element of habitual or regular use. Between 2019 and 2025, for example, the Fourth, Sixth, Seventh, Eighth, and Tenth Circuits [22] consistently found that the government must prove some variation of the concept ''that the defendant took drugs with regularity, over an extended

[22] *See, e.g., United States* v. *Davey,* 151 F.4th 1249, 1255 (10th Cir. 2025) (''temporal nexus'' between regular drug use and firearm possession); *United States* v. *Seiwert,* 152 F.4th 854, 861 (7th Cir. 2025) (''active and persistent drug users''); *United States* v. *Hasson,* 26 F.4th 610, 615 (4th Cir. 2022) (section 922(g)(3) prohibits the ''possession of firearms by an individual whose drug use is consistent, prolonged, and close in time to his firearm possession''); *United States* v. *Carnes,* 22 F.4th 743, 748 (8th Cir. 2022) (''[W]e interpreted § 922's 'unlawful user' element to require a temporal nexus between the proscribed act (for § 922(g)(3), possession of a firearm) and regular drug use.'').

period of time, and contemporaneously with his purchase or possession of a firearm'' [23] and that there must be a ''temporal nexus'' to ''regular and ongoing'' drug use.[24]

II. Interim Final Rule (IFR)

A. Discussion

Based on the foregoing, a disconnect has arisen between NICS firearm purchase determinations, ATF enforcement, and court decisions on what the definition of an unlawful user means. Relying on the inferences from ATF's current regulation, NICS denies transfers for those individuals who have, for example, a single admission of drug use in the past year, or a single failed drug test for an unlawfully used controlled substance within the previous year. This means that if a person has been documented as using a controlled substance illicitly even one time in the past 12 months, the person will be deemed temporarily prohibited under 18 U.S.C. 922(g)(3) from purchasing a firearm for a year from the underlying event. As Tables 1 and 2 above show, of the 8,817 standard NICS denials in which a person did not receive a firearm due to an 18 U.S.C. 922(g)(3) prohibition, 4,284 were predicated on an inference based on a single use. In addition, of the 326 delayed denials, ATF referred 80 of them based on a single misdemeanor conviction involving drugs, for a total of 4,634 persons who did not receive a firearm. As indicated by ATF's enforcement practice and by the court decisions discussed above, such denials do not reflect the best understanding of section 922(g)(3). In addition, such denials create unnecessary constitutional questions. *See Ocegueda,* 564 F.2d at 1366 (noting that section 922(g)(3) would create vagueness issues if construed to deny a firearm to those whose drug use was ''infrequent and in the distant past''). The prevailing opinion of many federal courts is that such denials are no longer supported under section 922(g)(3) and create unnecessary constitutional questions.

Accordingly, it would be inappropriate to retain inference examples in the regulatory definition which suggest that an admission or other evidence of a single use-related event—including a single conviction or a single failed drug test—occurring in the past 12 months is sufficient evidence upon which to base an administrative forfeiture, to prosecute an individual for unlawfully possessing a firearm under section 922(g)(3), or to deny a firearm transaction. This type of determination must be made based on evidence that indicates an individual regularly uses a controlled substance unlawfully. The current inference examples result in denied transactions that are not consistent with the prevailing interpretation of 922(g)(3).

Based on the current case law, it is appropriate to remove the inference examples of ''current use'' to instead require evidence of a pattern of unlawful use. The current inferences establish bright line rules for an inquiry that should be determined on a case-by-case basis. Also, the current inferences create confusion for those, like law enforcement organizations, courts, NICS users, and persons possessing firearms, who rely upon the current regulation's provisions. As a result, ATF is revising its definition of ''unlawful user of or addicted to any controlled substance.'' Removing the inference examples will help reduce confusion for NICS determinations, will prevent erroneous NICS denials for people possessing firearms, and will better align ATF's regulations with the best interpretation of section 922(g)(3). Future section 922(g)(3) NICS determinations that deny firearm transactions, and future ATF enforcement decisions, will therefore require evidence of regular and recent use.

In addition, ATF is also removing the other examples included in the current regulation. Currently, the regulation covers ''a conviction for use or possession of a controlled substance within the past year''; ''multiple arrests for such offenses within the past 5 years if the most recent arrest occurred within the past year''; and failing a drug test establishing a person used a controlled substance, '', provided that the test was administered within the past year.'' The regulation also includes a separate sentence with examples for members of the Armed Forces that contains both single-use inference examples and others. ATF is removing both sets of examples, even those that do not involve single-use inferences. During the course of assessing the single-use inference examples in light of court decisions and operational practices, ATF found that the other examples were often being intertwined with the single-use ones or had aspects that relate to questions about single-use decisions. For instance, the regulatory example for multiple arrests within the past five years if the most recent arrest occurred within the past year sometimes includes one event from five years ago and another from the current year. Such a fact pattern fits the regulatory example, but it does not demonstrate regular use because of the time gap between events, and it thus results in a problem very similar to the ones arising under the single-use inference examples.

As a result, because of the impact the examples overall are having on persons' ability to purchase firearms, ATF has determined that it is necessary to remove the examples in full, while clarifying that the prohibition in 18 U.S.C. 922(g)(3) requires that the records show a person is regularly using or possessing controlled substances, as described in the discussion above. This is an interim measure to address the harm to constitutional rights caused by erroneously denying a person a firearm while ATF further assesses whether new examples might be useful or feasible, given the variety of case-by-case fact patterns. ATF may reassess the definition of unlawful user in a separate notice of proposed rulemaking after the pending case *United States* v. *Hemani* concludes at the Supreme Court and considering any public comments in response to this IFR, or it may make amendments in a final rule based on this interim one. In the meantime, any erroneous denials based on the examples in the current definition will cease.

B. Specific Changes

To make the definition of ''[u]nlawful user of or addicted to any controlled substance'' easier to read, and to distinguish more clearly between the two prongs of the definition, ATF is breaking the definition into multiple paragraphs and has made minor plain-writing edits throughout. The first paragraph of the revised regulatory text in this rule defines when a person is addicted to a controlled substance. ATF is slightly revising the wording of this definition for better medical accuracy, so it now reads, ''A person who uses a controlled substance and demonstrates a pattern of compulsive use of the controlled substance, characterized by impaired control over use, is addicted to a controlled substance.'' The second paragraph defines an unlawful user of a controlled substance, and the remaining portions of the current definition fall within subparagraphs under paragraph (2).

ATF is revising the definition of an unlawful user to specifically provide that an ''unlawful user'' is someone who uses a controlled substance regularly over an extended period of time.[25] The

[23] *United States* v. *Bowens,* 938 F.3d 790, 793 (6th Cir. 2019) (internal citations omitted).

[24] *United States* v. *Morales-Lopez,* 92 F.4th 936, 945–46 (10th Cir. 2024).

[25] Regular use in this rule is a legal construct, distinct from a clinical diagnosis, and does not itself imply the presence of a substance use

new definition therefore adds ''over an extended period of time continuing into the present.'' It also clarifies that using a controlled substance without a lawful prescription also qualifies as unlawful use. As a result, the new definition reads: ''A person who regularly uses a controlled substance over an extended period of time continuing into the present, without a lawful prescription or in a manner substantially different from that prescribed by a licensed physician, is an unlawful user of a controlled substance.''

Paragraph (2)(i) then includes the portion of the current definition that sets out the temporal aspect, but it removes the phrase ''or weeks,'' adds ''unlawful'' before ''use,'' adds ''shipping, transporting, possessing, or receiving a firearm'' to clarify what ''before'' refers to, adds ''requires evidence,'' adds ''with sufficient regularity and recency'' to replace the existing phrase ''recently enough,'' and makes some minor plain-writing edits so that the first sentence (now two sentences) reads: ''Such unlawful use is not limited to using a controlled substance on a particular day, or within a matter of days before shipping, transporting, possessing, or receiving a firearm. Rather, unlawful use requires evidence that the person has unlawfully used the substance with sufficient regularity and recency to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire, ship, transport, receive, or possess the firearm.'' This rule then adds a new clarifying sentence to this paragraph, which reads ''A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire, ship, transport, receive, or possess the firearm.''

Additionally, ATF is adding a new provision to clarify when a person is not an unlawful user, which is in paragraph (2)(ii) and reads: ''A person is not an unlawful user of a controlled substance if the person has ceased regularly unlawfully using the substance, or if the person's unlawful use is isolated or sporadic or does not otherwise demonstrate a pattern of ongoing use. A person is also not an unlawful user if the person, while using a lawfully prescribed controlled substance, deviates slightly or immaterially from the instructions of the prescribing physician.'' The rule removes the remaining section of the current definition, the examples, from the definition.

III. Statutory and Executive Order Review

A. Administrative Procedure Act

Under the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(A), an agency is not required to undergo notice and public comment when it issues an interpretive rule. An interpretive rule ''typically reflects an agency's construction of a statute that has been entrusted to the agency to administer'' and does not modify or add ''to a legal norm based on the agency's own authority.'' *Syncor Int'l Corp.* v. *Shalala,* 127 F.3d 90, 94–95 (D.C. Cir. 1997) (emphasis omitted).

This rule is an interpretive rule because ATF is merely amending the regulation to better align it with the best interpretation of the statute. *See, e.g., Warshauer* v. *Solis,* 577 F.3d 1330, 1338, 1340 (11th Cir. 2009) (an interpretive rule ''merely clarifies how the [agency] intends to enforce'' a statute, and a ''statement seeking to interpret a statutory . . . term is . . . the quintessential example of an interpretive rule'' (quotation omitted)). Not only have court decisions over the past 25 years consistently interpreted the statute to not include single-use inferences and to rest on regular use or a pattern of use, but ATF has also been interpreting the statute that way for most single-use denials for more than a decade and has changed its referral practices accordingly. This rule informs the public about ATF's current view of how the statutory term ''unlawful user of or addicted to a controlled substance'' should be construed and clarifies how the Department intends to enforce it in the context of firearm denials. *See, e.g., Perez* v. *Mortgage Bankers Ass'n,* 575 U.S. 92, 97 (2015) (a rule issued ''to advise the public of the agency's construction of the statutes and rules which it administers'' is an interpretive rule (quotation omitted)); *Mendoza* v. *Perez,* 754 F.3d 1002, 1021 (D.C. Cir. 2014) (''An 'interpretive rule' describes the agency's view of the meaning of an existing statute or regulation.'' (quotation omitted)); *id.* (interpretive rules ''are those that clarify a statutory or regulatory term''); *Orengo Caraballo* v. *Reich,* 11 F.3d 186, 195 (D.C. Cir. 1993) (''A statement seeking to interpret a statutory or regulatory term is . . . the quintessential example of an interpretive rule.''). This rule creates no new law, right, or duty, and it has no effect independent of the statute. Rather, it provides guidance on how the Department will enforce the statute, principally by removing interpretive examples from the definition that are no longer aligned with the best interpretation of the statute and by clarifying that the definition involves regular use or a pattern of use. This rule does not change the prohibition or authorities created by the statute.

Although this rule is an interpretive rule, ATF is issuing this rule as an IFR and soliciting public comments on possible new examples and other changes that might help further clarify the relevant definition in a possible future proposed rulemaking, or in a final rule stemming from this IFR, for that purpose.

An agency may also forego the delayed effective date typically required by the APA ''for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). As to whether there is good cause to forego the delayed effective date typically required by the APA, courts have asked whether the need to immediately implement a new rule outweighs regulated parties' need to prepare for implementation of the rule. *See, e.g., Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Emps., AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981). Here, there is no need for additional delay for regulated parties to prepare to implement this rule because this rule does not require any regulated parties to take any actions. *See* 5 U.S.C. 553(d)(1), (d)(3). Instead, this rule simply ensures that certain regulated parties will not be denied firearms due to an erroneous interpretation of 18 U.S.C. 922(g)(3).

B. 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 IFR amends 27 CFR 478.11 to bring the definition of ''unlawful user of or addicted to any controlled substance'' into alignment with court decisions and

disorder. ATF notes that substance use alone also does not equate to addiction or substance use disorder. This is, in part, one of the reasons that the courts, and now ATF, are no longer relying on single-use cases to establish inferences of regular use under this regulation. From a medical perspective, substance use exists along a continuum, ranging from non-problematic use to clinically diagnosable substance use disorder.

ATF internal guidance that a single use of a controlled substance does not constitute sufficient evidence to support a determination that a person is an unlawful user within the statutory definition.

The Office of Management and Budget (''OMB'') has determined that, although this rule is not economically significant under section (3)(f)(1) of Executive Order 12866, this rule is a ''significant regulatory action'' under the Order. OMB has therefore reviewed this rule. ATF provides the following analysis to comply with Executive Orders 12866 and 13563.

This rulemaking provides qualitative benefits by reducing a regulatory burden on the public, including qualitative benefits for current and future firearm owners, without reducing public safety. The provisions of this IFR better align with field enforcement, judicial precedent, agency guidance, administrative processes, and public understanding of the key definitions and patterns that affect firearms purchases and prohibitions.

1. Need Statement

This IFR is designed to correct the discrepancy that currently exists in enforcing section 922(g)(3) between, *e.g.,* NICS firearm purchase determinations and certain ATF referrals, on the one hand, and court decisions, on the other hand. Relying on current ATF regulations, NICS denies firearm purchases for those individuals who, within the previous year, have had a single arrest for admitted drug use or drug possession, or who failed a test for an unlawfully used controlled substance. In addition, ATF refers certain delayed denials, those based on a single misdemeanor conviction involving drugs, for prosecution or to retrieve the firearm (including cases in which the person is subject to forfeiture). The inference examples that NICS and ATF rely upon for these actions are not supported by federal courts that have interpreted the phrase ''unlawful user.'' This discrepancy has created confusion for purchasers and those tasked with enforcing the statutory prohibition, has caused a divergence between court decisions and enforcement decisions, and has caused (and continues to cause) some people to be erroneously denied firearms. ATF needs to address this situation and has decided to revise its regulatory definition of ''unlawful user of or addicted to any controlled substance'' to align with court interpretations of the definition and specifically require that a person must use the controlled substance regularly over an extended period of time, continuing into the current time, before being deemed an ''unlawful user of or addicted to any controlled substance.''

2. Benefits

ATF estimates the impacts of the IFR to be primarily a reduced burden on the public, including qualitative benefits for current and future firearm owners.

As of December 31, 2025, there were 54,136 entries in the NICS Indices designated as ''unlawful user/addicted to controlled substance'' out of a total of 34,036,267 active entries in the NICS Index alone (one of the three systems that make up the Indices).[26] NICS uses the information in the III, NCIC, and NICS Index to assess whether a person wishing to receive a firearm from a licensee is prohibited from doing so under federal statutes, including on the basis of being an unlawful user of a controlled substance. If so, NICS notifies the licensee preparing to sell the firearm that the person is denied from purchasing. NICS denials may occur at any point within the first three business days from when the transactions were initiated, in which case they are called standard denials. The potentially prohibiting record may also take longer to investigate, and thus the denial may arrive after the initial three-business day period, in which case they are called delayed denials. During a delayed denial, the person may have received the firearm before the licensee is notified that the person was denied. NICS refers delayed-denial cases to ATF to pursue.

With regard to pursuing delayed-denial referrals from NICS involving 18 U.S.C. 922(g)(3), ATF's field division referral guidelines state that most single ''inference of use'' denials (*i.e.,* admitted use, admitted possession, positive drug test, or single drug arrest in the past year) should not be referred to the field offices to prosecute or to retrieve purchased firearms (including any firearms a person must forfeit). However, DENI refers an 18 U.S.C. 922(g)(3) denial to the field if the purchaser has a misdemeanor drug conviction within the past year (another type of single-use inference) or multiple drug arrests in the past five years with at least one of those arrests being in the past year. In FY 2025, NICS denied 9,163 transfers based on a person being an unlawful user of or addicted to a controlled substance. Of these, 8,947 were ultimately denied a firearm. *See* Table 1, above, and accompanying text. Of these 8,947 denials, 4,560, or about 51 percent (51 percent = 4,560/8,947 * 100) were based on admissions of single use or single possession, a single failed drug test, or a single misdemeanor drug conviction within the past year as an indication of regular use or possession. *See* Table 2, above.

The 4,560 denials based on single-incident inferences included 196 delayed denials in which the person received a firearm. ATF did not pursue any of these denials for further criminal investigation, firearms forfeiture, or prosecution. ATF referred only 80 delayed denials based on single-use inferences (a single misdemeanor drug conviction). This data and ATF guidelines and practices demonstrate both the rarity of drug-related enforcement actions and the de facto standard for recurring or regular use that is already applied to most delayed denials in the field. Because, as a practical matter, most delayed denials do not result in an individual failing to receive a firearm on the basis of section 922(g)(3), amending the regulations as proposed in this rule to clarify the scope of section 922(g)(3) will have only de minimis impacts for individuals' ability to receive a firearm pursuant to a delayed denial and exercise their Second Amendment rights.

In the context of standard denials, however, the amended regulatory definition will confer a qualitative benefit to persons who would have been denied the opportunity to purchase a firearm under the current, unamended regulatory definition. As noted above, NICS reported 9,163 denials under 18 U.S.C. 922(g)(3) in FY 2025, 8,817 of which were standard denials in which the person did not receive the firearm on the basis of unlawfully using controlled substances. *See* Table 1, above. Of these cases, 4,284 were denied on the basis of inferences due to a single admission of use, single admission of possession, single failed drug test during the past year, or single misdemeanor drug conviction. *See* Table 2, above. Adding to this number the 80 delayed denials based on a single misdemeanor conviction results in 4,364 persons who were unable to receive or retain a firearm based on single-use inferences. These 4,364 persons would thus be the group that would receive qualitative benefits from this rule, in that they would now—contrary to current practice—be able to purchase firearms during the same year in which they had only one drug-related incident giving rise to an inference of regular use or possession. Assuming that this annual number of standard

[26] FBI CJIS, *Active Entries in the NICS Indices* (last updated Dec. 31, 2025), *https://www.fbi.gov/file-repository/cjis/active_records_in_the_nics-indices.pdf/view.*

denials based on single-use inferences would continue at a similar rate int the future without this rule, then over the next ten years, this rule will prevent erroneously denying—as standard denials based on single-use inferences—approximately 42,840 transfers.

This IFR will also likely lead to benefits to the public in the form of greater clarity, and to benefits in the form of less ambiguity for those who enforce and administer the various federal law provisions in the GCA and its implementing regulations. ATF is adding new provisions to clarify that a person is not an unlawful user if the person has ceased regularly using the substance or if the person uses a controlled substance in an isolated or sporadic manner, with added language to indicate that a single incident is not sufficient for a denial under 18 U.S.C. 922(g)(3). The rule also removes the examples from the definition, which have caused confusion about whether a single incident of using or possessing a controlled substance could create an inference of regular use.

These provisions better align with field enforcement, judicial precedent, and administrative guidance. Thus, the disconnect between the current regulatory definition and these other indicia of the meaning of section 922(g)(3) will no longer be a potential source of confusion for the public.

3. Costs

ATF estimates that this rule will not create any compliance burdens, either qualitative or quantitative. This is because ATF has already adopted, as a practical matter, the changes discussed in this rule in its enforcement actions,[27] and because the changes also align with longstanding court decisions that require regular unlawful use of a controlled substance over an extended period of time. Although ATF practices have changed in anticipation of this rule, and although ATF anticipates that NICS practices for background checks will also change as a result of the rule, these changes would not present a public cost or burden. Instead, some persons who currently cannot purchase a firearm during the same year in which they have a drug incident would simply be able to purchase the firearm, without any material change to the public in how NICS operates.

However, this rule's change could potentially result in an increased risk to public safety because some persons who have a record of only one drug offense in the relevant time period could be regular drug users that just do not have records of more offenses. Under the current regulatory definition, such persons would receive standard NICS denials and would not be able to purchase a firearm in the same year in which they have such an incident. Under the proposed regulatory definition, by contrast, they would be able to. This rule could thus result in an increased risk that such persons would be under the influence of drugs when purchasing and thereafter possessing their firearm,[28] representing a risk to public safety. However, as noted above, ATF estimates this increased risk to be de minimis. Of the aforementioned 34,036,267 entries in the NICS Index database, 54,136 were entries for being an unlawful user of or addicted to a controlled substance (including denials not based on single-use inferences), which represents only 0.16 percent of prohibiting entries. In addition, the population that would now be able to purchase firearms in this context would be 4,284 persons per year—*i.e.,* those persons who would have received standard denials involving single-incident cases without this rule. An unknown portion of this population would represent the magnitude of potential risk to public safety. ATF believes that the costs associated with such circumstances would be vanishingly small because ATF's enforcement experience has shown that a pattern of controlled substance arrests, controlled substance convictions, or other incidents outlined in the amended regulatory definition—not a single example of such incidents—is a more accurate indicator of whether a person is a habitual user of controlled substances.

4. Regulatory Alternatives

ATF considered three alternatives in formulating this rule: continuing the status quo without changing the existing regulatory definition; issuing guidance to those who rely on the current provision; or revising the existing regulation.

Option 1: Continuing the Status Quo of Maintaining the Existing Inferences

This is also known as the no-action alternative. ATF considered this alternative but, in light of (1) court cases over the past 20 years that have found a single incident of drug use to be insufficient in most cases, (2) ATF's experience in terms of prosecutors declining to pursue such cases, and (3) the conflicting inferences in the regulation that have caused differing applications, ATF concluded this option would continue to impose a qualitative burden on the public without increasing public safety—*i.e.,* the level of public safety related to this prohibition's definition would remain the same as it currently is. ATF considers it inappropriate to retain the existing inference examples in the regulatory definition because a single recent incident of using or possessing a controlled substance is insufficient evidence upon which to base an administrative forfeiture or to deem a person prohibited under the GCA as an unlawful user. These inferences no longer align with ATF practice and guidance, or the weight of court decisions issued over the past 20 years, and they create confusion and inconsistency between different ways the regulatory inferences are applied. Classifying individuals as prohibited persons on the basis of a single unlawful use of a controlled substance is also potentially unconstitutional under the Second Amendment. As a result, ATF determined that it should take some action to resolve these issues.

Option 2: Guidance

ATF considered issuing guidance to the NICS Section and other Department elements charged with administering or enforcing 18 U.S.C. 922(g)(3), as well as state, local, and tribal partners that may also rely upon 27 CFR 478.11. The guidance would set out the court decisions and ATF's practices that have aligned with those decisions since at least 2018. In addition, it would inform the enforcing elements that ATF's policy and statutory interpretation position is that a single incident is no longer sufficient to meet the statutory prohibition and request that the elements adjust their internal guidance and their enforcement practices to align. ATF believes providing guidance to the other elements is an important option, especially in the short term, and will be working with the FBI on this change. ATF believes that guidance can often contain more detailed explanations of how to apply statutory or regulatory terms than can a regulation. However, because the existing regulatory definition contains the problematic inference examples, ATF determined that the guidance option would not suffice as a complete replacement for a

[27] In 2026, ATF also stopped referring delayed denials based on single misdemeanor drug convictions.

[28] Substance abuse does not necessarily result in intoxication or impairment at any given moment in time. From a clinical standpoint, impairment is episodic and substance-specific. However, because the possibility that regular unlawful drug use could result in intoxication, impairment, or other effects on judgment, Congress was concerned about the risk of such use to public safety if the person also had a firearm. By making the changes in this rule, that risk could be increased.

rulemaking that removes the inference examples. Guidance should provide more details and interpret regulatory provisions, not conflict with them or obviate portions of them. Without the regulatory change, many people would still believe they have to apply these inferences or use these examples. A regulation is treated as more binding than guidance, even on agencies, and reaches other organizations that might not know to search out guidance or that guidance changing the regulation exists.

Option 3: Rulemaking (Proposed Alternative)

The inferences included in the definition of unlawful user are contained in a regulation. To remove them from that regulation requires a rulemaking. The existing definition's inference examples conflict with court decisions and enforcement practice, so retaining them in the regulatory definition creates potential confusion and inconsistency, and may cause persons to be denied firearms when they should not be. Revising, in relevant part, the definition of an unlawful user to specifically include that the person must use the controlled substance regularly over an extended period of time, and to remove the inference examples entirely, reduces confusion for those enforcing section 922(g)(3) and for persons possessing, or desiring to possess, firearms. This is especially important for the future so that members of the public are not confused when they consult ATF's regulations. In addition, this option complies with sound regulatory drafting principles by deleting no-longer-applicable examples and bringing the regulations into alignment with years of case law and previously changed portions of ATF internal guidance and practices. ATF is issuing this interpretive rule to effectively stop people from being denied firearms based on the existing regulation's content. A rulemaking—not a different option—is the most effective way to achieve this goal.

C. 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 as defined in 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. Although this IFR is a significant regulatory action as defined by Executive Order 12866 because it raises a novel policy issue, it does not impose total costs greater than zero. This rule provides qualitative benefits to the public by clarifying an existing definition and ensuring the definition aligns better with court cases that have interpreted it, thereby reducing the number of individuals erroneously denied the option of purchasing firearms. It imposes no costs. This IFR therefore qualifies as an Executive Order 14192 deregulatory action (defined by OMB Memorandum M–25–20 as a final action that imposes total costs less than zero).

D. 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 IFR does not create a criminal regulatory offense and is thus exempt from Executive Order 14294 requirements.

E. Executive Order 13132

This IFR does not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (Federalism), the Acting Director, ATF, has determined that this rule does not impose substantial direct compliance costs on state and local governments, preempt state law, or meaningfully implicate federalism. It thus does not warrant preparing a federalism summary impact statement.

F. Executive Order 12988

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

G. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–12, agencies are required to conduct a regulatory flexibility analysis of any rule subject to notice-and comment-rulemaking requirements unless the agency head certifies, including a statement of the factual basis, that the rule will 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 Acting Director, ATF, certifies, after consideration, that this IFR does not have a significant economic impact on a substantial number of small entities. This rule is deregulatory and does not impose any additional costs or burdens on any party, including members of the public or regulated businesses. Instead, the provisions of this rule primarily offer clarity on existing policy, reduce qualitative burdens on current and prospective firearm owners, and result in fewer background check denials, thereby permitting small businesses to complete more firearm sales.

Although reducing denials may result in additional sales for some small businesses engaged in dealing firearms, the number of denials based on 18 U.S.C. 922(g)(3), as explained in section III.B of this preamble, is small enough that ATF anticipates that this increased revenue will not have a significant economic impact on a substantial number of such businesses. In addition, this rule is an interpretive rule that is not required to proceed through notice and comment, *see* section III.A of this preamble, so it is exempt from the requirement to complete a regulatory flexibility analysis.

H. Small Business Regulatory Enforcement Fairness Act of 1996

This IFR does not have a significant economic impact on a substantial number of small entities under the Small Business Regulatory Enforcement Fairness Act of 1996, because it imposes no additional costs or burdens on any party, including members of the public or regulated businesses. Instead, the rule's provisions primarily offer clarity on existing policy, reduce qualitative burdens on current and prospective owners of firearms, and result in fewer background check denials.

I. Unfunded Mandates Reform Act of 1995

This IFR does not include a federal mandate that might result in the aggregate expenditure by state, local, and tribal governments, or by the

private sector, of $100 million or more in any one year, and it will 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.

J. 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. As defined in 5 CFR 1320.3(c), an information collection includes any reporting, record-keeping, monitoring, posting, labeling, or other similar actions an agency requires of the public. This IFR does not create any new information collection requirements, or impact any existing ones, covered under the PRA.

K. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* OMB's Office of Information and Regulatory Affairs has determined that this IFR does not meet the criteria in 5 U.S.C. 804(2) to constitute a major rule. This rule is not a major rule because it will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

IV. Public Participation

A. Comments Sought

ATF requests comments on the IFR from all interested persons. ATF specifically requests comments on the clarity of this IFR and how it may be made easier to understand. In addition, ATF requests comments on the costs or benefits of the rule and on the appropriate methodology and data for calculating those costs and benefits.

All comments must reference this document's RIN 1140–AB03 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 personally identifiable information (''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 parts of all comments meeting the requirements of this section, whether submitted electronically or on paper, and except as described 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–AB03. 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 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 or in 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 it 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* by following the instructions on the web page. 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, 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 Acting Director of ATF within the 180-day comment period. The Acting Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this IFR 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–AB03).

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 record-keeping requirements, Research, Seizures and forfeitures, Transportation.

For the reasons discussed in the preamble, ATF amends 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. Amend § 478.11 by revising the definition of ''Unlawful user of or addicted to any controlled substance'' to read as follows:

§ 478.11 Meaning of terms.

* * * * *

Unlawful user of or addicted to any controlled substance. (1) A person who uses a controlled substance and demonstrates a pattern of compulsively using the controlled substance, characterized by impaired control over use, is addicted to a controlled substance.

(2) A person who regularly uses a controlled substance over an extended period of time continuing into the present, without a lawful prescription or in a manner substantially different from that prescribed by a licensed physician, is an unlawful user of a controlled substance.

(i) Such unlawful use is not limited to using a controlled substance on a particular day, or within a matter of days before shipping, transporting, possessing, or receiving a firearm. Rather, unlawful use requires evidence that the person has unlawfully used the substance with sufficient regularity and recency to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire, ship, transport, receive, or possess the firearm.

(ii) A person is not an unlawful user of a controlled substance if the person has ceased regularly unlawfully using the substance, or if the person's unlawful use is isolated or sporadic or does not otherwise demonstrate a pattern of ongoing use. A person is also not an unlawful user if the person, while using a lawfully prescribed controlled substance, deviates slightly or immaterially from the instructions of the prescribing physician.

* * * * *

Daniel Driscoll,

Acting Director.

[FR Doc. 2026–01141 Filed 1–20–26; 11:15 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2025–1125]

RIN 1625–AA00

Safety Zone; Rocket Test Site, Rio Grande River, Boca Chica, TX

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Rio Grande River. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by cryogenics and structural tests of SpaceX rockets at their Massey's test site. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless specifically authorized by the Captain of the Port, Sector Corpus Christi. We invite your comments on this proposed rulemaking.

DATES: This rule is effective without actual notice from January 22, 2026 through February 28, 2026. For the purposes of enforcement, actual notice will be used from December 22, 2025, until January 22, 2026.

ADDRESSES: To view available documents go to *https://www.regulations.gov* and search for USCG–2025–1125.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rule, contact Lieutenant Timothy Cardenas, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–244–4784, or email *Timothy.J.Cardenas@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background and Authority

SpaceX conducts rocket testing at their Massey's Test Site on a weekly basis. This test site is on the Rio Grande River, approximately 6 miles inland from the mouth of the river. Some, but not all, test activities at this location create hazards such as the potential accidental discharge of cryogenic fuel and test failures resulting in dangerous projectiles and falling hot embers or other debris. The Captain of the Port (COTP) Corpus Christi has determined that these potential hazards are a safety concern for anyone on the Rio Grande River within a half mile of the test site. Therefore, the COTP is issuing this rule under the authority in 46 U.S.C. 70034, which is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone.

The Coast Guard is issuing this rule without prior notice and comment. As is authorized by 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. Due to the nature of testing activities at the site, the Coast Guard is not notified if static fire or cryogenic test will be conducted until hours before their start. Therefore, we do not have enough time to solicit and respond to comments. However, the Coast Guard is preparing a separate Notice of Proposed Rulemaking to establish a permanent safety zone around the Massey's Test Site, and the Coast Guard will accept and consider public comments as part of that rulemaking.

For the same reasons, the Coast Guard finds that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.