4410-FY-P)

**DEPARTMENT OF JUSTICE**

**Bureau of Alcohol, Tobacco, Firearms, and Explosives**

**27 CFR part 478**

**[Docket No. ATF-2026-0074; ATF 2025R-27P]**

**RIN 1140-AB01**

# Revising Regulations Defining "Engaged in the Business" as a Dealer in Firearms

**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") is proposing to revise regulations implementing the "engaged in the business" definition from the Bipartisan Safer Communities Act ("BSCA"). Although Congress defined that term in BSCA, the Department of Justice ("Department") provided additional definitions in its implementing regulations to further define terms within the statutory definition and to include examples of covered activities that established rebuttable presumptions of being engaged in the business of dealing in firearms. This rule proposes to remove those changes. ATF has determined that the changes have not shown the expected impact on federal firearms licensee applications, administrative licensing actions, civil forfeitures, or other anticipated effects.

**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-AB01, 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-AB01*.

*Instructions:* All submissions must include the agency name and number (RIN 1140-AB01) for this notice of proposed rulemaking ("NPRM" or "proposed rule"). 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 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 Department and ATF have promulgated regulations to implement the GCA in 27 CFR part 478.

The GCA, at 18 U.S.C. 922(a)(1)(A) and as implemented at 27 CFR 478.41(a), makes it unlawful for any person, except a federal firearms licensee ("FFL" or "licensee")—that is a licensed dealer, manufacturer, or importer—to ''engage in the business'' of dealing in, manufacturing, or importing firearms. A person may file an application with and receive such a license from ATF, to which the Attorney General has delegated the licensing function. *See* 18 U.S.C. 923(a); 27 CFR 478.41(b). Licensees are generally required to conduct background checks on prospective firearm recipients through the Federal Bureau of Investigation's National Instant Criminal Background Check System ("NICS") to prevent prohibited persons from receiving firearms. *See* 18 U.S.C. 922(t). Licensees also must

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[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 matters within ATF's jurisdiction, including under the National Firearms Act, GCA, and Title XI of the Organized Crime Control Act. ATF's jurisdiction also includes those portions of section 38 of the Arms Export Control Act pertaining to the permanent import of defense articles and defense services and the Contraband Cigarette Trafficking Act.

maintain firearms transaction records for crime-gun tracing purposes. *See* 18 U.S.C. 923(g)(1)(A).

In 1986, Congress passed the Firearms Owners' Protection Act (''FOPA''), Pub. L. 99–308 (1986), in which it defined the term "engaged in the business" for purposes of the GCA as applied to a dealer.[3] The statute defined a dealer engaged in the business as ''a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.'' 18 U.S.C. 921(a)(21)(C) (2020). FOPA also defined the phrase ''with the principal objective of livelihood and profit'' to mean ''that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection.'' FOPA, Pub. L. 99–308, sec. 101 (adding paragraphs (21)(C) and (22) to 18 U.S.C. 921(a)); *see also* 18 U.S.C. 921(a)(22) (2020). FOPA's definition of ''engaged in the business'' as a dealer was incorporated into ATF's implementing regulations at 27 CFR 178.11[4] (now § 478.11) as ''Dealer in firearms other than a gunsmith or a pawnbroker.'' 27 CFR 478.11.

On June 25, 2022, Congress passed the Bipartisan Safer Communities Act ("BSCA"), Pub. L. 117–159. Among other provisions, section 12002 of BSCA broadened the statutory definition of "engaged in the business" by eliminating the requirement that a person's "principal objective" of purchasing and reselling firearms must include both "livelihood and profit" and replacing it with a requirement that the person must intend "to predominantly

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[3] ATF notes that there is there is some overlap in statutory control of firearms for purposes of the GCA and for purposes of section 38 of the Arms Export Control Act. Any person (1) who "engages in the business of" manufacturing, exporting, or temporarily importing defense articles and defense services related to certain firearms on the United States Munitions List and designated in the International Traffic in Arms Regulations ("ITAR"), 22 CFR parts 120–130, at 22 CFR 121.1, or (2) who engages in the brokering of firearms designated at that section and those firearms designated as defense articles on the U.S. Munitions Import List at 22 CFR 447.21, is required to register with the Department of State and pay a fee. These requirements are prescribed at sections 122.1 and 129.3 of the ITAR and are distinct from the requirements discussed in this proposed rule and the definition of "engaged in the business" at 18 U.S.C. 921(a)(21).

[4] Commerce in Firearms and Ammunition, 53 FR 10480, 10491 (Mar. 31, 1988).

earn a profit." The statute now provides that, as applied to a dealer in firearms, the term "engaged in the business'' means ''a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business *to predominantly earn a profit* through the repetitive purchase and resale of firearms.'' 18 U.S.C. 921(a)(21)(C) (emphasis added). BSCA defined the term "predominantly earn a profit" to mean that the intent underlying the sale or disposition of a firearm is for pecuniary gain rather than for other purposes, such as selling a personal firearms collection. 18 U.S.C. 921(a)(22). Prior to BSCA, this term required the principal objective of selling or disposing firearms to be both for profit and, in addition, maintaining a livelihood. BSCA's statutory amendment to the term "predominantly earn a profit" shifts the primary focus to the intended pecuniary gain from selling or disposing firearms even when such activity is not the person's main source of income.

When drafting regulations to implement BSCA, the Biden Administration directed the Department to further clarify, through rulemaking, the meaning of the term "engaged in the business." Specifically, President Biden issued Executive Order 14092, which required the Attorney General to develop and implement a plan to, in relevant part, "clarify the definition of who is engaged in the business of dealing in firearms, and thus required to become [FFLs], in order to increase compliance with the federal background check requirement for firearm sales, including by considering a rulemaking, as appropriate and consistent with applicable law; [and] prevent former FFLs whose licenses have been revoked or surrendered from continuing to engage in the business of dealing in firearms."[5] The Biden Administration attempted to implement policy changes that went far beyond the regulatory changes necessary to implement BSCA.

The Department published a final rule, titled "Definition of 'Engaged in the Business' as a Firearms Dealer," 89 FR 28968 (Apr. 19, 2024) ("EIB rule"), which became effective on

[5] Reducing Gun Violence and Making Our Communities Safer, E.O. 14092, sec. 3(a)(i), 88 FR 16527, 16527–28 (Mar. 14, 2023).

May 20, 2024. The EIB rule amended the regulations in 27 CFR part 478 to (1) incorporate BSCA's definition of the term "engaged in the business," (2) provide clarification and guidance on what it means to be "engaged in the business" and to have the requisite intent to "predominantly earn a profit," and (3) identify conduct that was presumed to constitute "dealing" and to show relevant intent. *See* 89 FR 28968. The EIB rule also defined the term "responsible person" and addressed the procedures former licensees must follow when they liquidate business inventory when their license is terminated. *Id.*

Although the EIB rule purported to provide clarification and guidance, many provisions of the rule were—and are—at odds with the statutory text. By broadly defining the concept of unlawful dealing, for instance, the Biden Administration began to approach a system of universal background checks through administrative regulation. For example, one definition narrowed the range of firearms that could permissibly be deemed part of a "personal collection," and thus, that may be liquidated by unlicensed persons. The Department also adopted fact-pattern presumptions that many objectors believed, in practice, would relieve the Government of its burden of proof to demonstrate unlawful dealing.

The EIB rule was immediately the subject of litigation. On June 12, 2024, the United States District Court for the Northern District of Texas enjoined ATF from enforcing the rule as to the plaintiffs—one individual, four advocacy groups, and the States of Texas, Mississippi, Louisiana and Utah—for the pendency of the litigation.[6] In addition, the district court found that several regulatory presumptions in the EIB rule conflict with the statute.[7] In particular, it found that ATF had no authority to use administrative regulations to expand the zone of firearms-dealing subject to regulation beyond that which Congress statutorily created. In subsequent litigation, the United States District Court for the District of Kansas

[6] *See Texas. v. ATF*, 737 F. Supp. 3d 426 (N.D. Tex. 2024).
[7] *See id.* at 442 (stating that "several presumptions conflict with the statutory text. Two of them, for example, provide that a person is presumptively 'engaged in the business' if the person 'demonstrates a willingness and ability to purchase and resell' firearms or 'purchases ... or ... resells' firearms").

denied a motion for preliminary injunction, on both standing and the merits,[8] as did the United States District Court for the Northern District of Alabama with respect to standing.[9] However, on September 30, 2025, the Northern District of Alabama granted the plaintiff's motion for summary judgment. The Northern District of Alabama found that the plaintiffs had established standing. On the merits, the court determined that ATF exceeded its statutory authority in issuing the final rule and that the rule improperly expanded the statutory definition of "engaged in the business."[10]

**II. Proposed Rule**

On further review, ATF agrees that the EIB rule is replete with procedural and substantive problems. Consequently, ATF proposes repealing those sections of the EIB rule that do not correctly implement the GCA and BSCA. ATF does not propose, however, to repeal the EIB rule in its entirety. Some sections of the EIB rule will be retained—for example, those providing for the discontinuance of business operations—although this rule proposes to amend some of those provisions.

*A. Presumptions*

The EIB rule created fact-pattern presumptions that a person was engaged in the business. These presumptions were intended to be used to determine whether a person was engaged in the business as a dealer and whether a person had the intent to predominantly earn a profit. *See* 89 FR 28975–80. For example, a person would be presumed to be engaged in the business when a person repetitively resells or offers for resale firearms—

(i) within 30 days after the person purchased the firearms; or

(ii) within one year after the person purchased the firearms if they are—

(A) new, or like new in their original packaging; or

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[8] *See Kansas v. Garland*, 2024 WL 3360533, at *9 (D. Kan. July 10, 2024) (finding "serious issues appear in Plaintiffs' standing and merits arguments that prevent them from making the strong showing necessary to obtain injunctive relief").

[9] *Butler v. Garland*, 2024 WL 5424418 (N.D. Ala. Nov. 4, 2024).

[10] *Butler v. Bondi*, 805 F. Supp. 3d 1175 (N.D. Ala. 2025).

(B) the same make and model, or variants thereof.

27 CFR 478.13(c). Additionally, 27 CFR 478.13(d)(2) identified seven circumstances that create a presumption of intent to predominantly earn a profit, which included, for example, when a person "[p]urchases or otherwise secures merchant services as a business (*e.g.*, credit card transaction services, digital wallet for business) through which the person intends to repetitively accept payments for firearms transactions."

The EIB rule's stated intent was to (1) license more persons; (2) deter others from engaging in the business without a license; (3) increase the number of background checks by increasing the licensed population; and (4) expand the reach of crime-gun trace requests by increasing the licensed population. *See* 89 FR 28968.

With respect to the first two purposes, ATF's position is the presumptions created by the EIB rule were largely unnecessary because the statutory definition is readily comprehensible. For dealers, the core of being engaged in the business requires the intent to profit from the repeated buying and selling of firearms. In other words, a person must be a wholesaler or retailer of new or used goods. For example, a person who buys ten models of the same handgun, with the predominant intent to resell for a profit, and then proceeds to sell any number of them repetitively three days later at a flea market is engaged in the business within the statutory definition. *See* 18 U.S.C. 921(a)(21)(C) (applying the definition of "engaged in the business" as a dealer). That person would be engaged in the business from the moment he made repetitive sales with the intent to profit. Even if the individual sold only two firearms, the individual intended to engage in a course of business dealings and then began doing so. Courts have held that such activity requires a license because the statute reaches those who hold themselves out as retail sources of firearms.[11] In contrast, selling two

[11] *See United States v. King*, 735 F.3d 1098, 1107 (9th Cir. 2013) (upholding conviction of defendant who attempted to sell one firearm and represented to buyer that he could purchase more for resale, and noting that "Section 922(a)(1)(A) does not require an actual sale of firearms"); *United States v. Zheng Jian Shan*, 90 F. App'x 31 (9th Cir. 2003) (holding that evidence of sale of weapons in one transaction where defendant demonstrated willingness and ability to resell more weapons was enough to affirm conviction).

firearms from a personal collection in two isolated transactions does not rise to the level of engaging in the business because there is no intent to engage in repetitive buying and selling for profit.

More importantly, the existence of these presumptions created a serious risk of abuse in civil and administrative proceedings. The court of appeals cases relied upon by the EIB rule used the strong form of rebuttable presumptions: the fact will be presumed to exist until the defendant offers enough evidence to disprove it. *See* 89 FR 29007. The citations in the EIB rule indicate—or at the very least, raise the risk that courts might erroneously conclude—that the EIB rule was intended to do more than simply shift the burden of production. Potentially shifting the burden of proof to the defendant raised concerns among the regulated public, Members of Congress, and others that ATF illegitimately attempted to relieve the Government of its burden of proof in civil and administrative proceedings. Indeed, in *Texas v. ATF*, the district court found the presumptions to be highly problematic because "they flip the statute on its head by requiring that firearm owners prove innocence rather than the government prove guilt."[12] It further stated that "[p]resumptions, especially in administrative proceedings that may generate institution-destroying liability, cannot be a matter of Department *ipse dixit*."[13] Thus, on further review, ATF agrees that the risk that the presumptions could have been used erroneously to relieve the Government of its burden of proof justifies discarding the presumptions.

While the Department disclaimed that the presumptions were designed to relieve the Government of its burden of proof (and the EIB rule stated that "the rebuttable presumptions apply only to shift the burden of production," 89 FR 29007), that disclaimer rests on a questionable foundation. The presumptions all involved fact patterns from which a fact finder could find that a person was engaged in the business. Given that the presumptions already

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[12] *Texas v. ATF*, 737 F. Supp. 3d at 442.
[13] *Id*.

involved facts sufficient to create a *prima facie* case, the defendant would already be exposed to a legal judgment unless he came forward with sufficient facts to explain the plaintiff's case. Switching only the burden of production would have had no further effect. In light of the foregoing, the rule could be reasonably perceived as shifting the burden to the individual to disprove the presumption. At minimum, even if the EIB rule truly meant to shift only the burden of production—and nothing else—then the presumptions were unnecessary.

To be clear, discarding the presumptions does not mean that a person who engages in behavior identified by the presumptions will not be found to be engaged in the business. The actions identified by the presumptions in EIB provide circumstantial evidence from which a fact finder could potentially find that a person was engaged in the business. Removing the EIB rule's legal presumptions simply prevents this evidence from being given dispositive effect unless the firearm seller can carry the burden of disproving that he was engaged in the business.

Furthermore, ATF has not used the EIB rule's presumptions in civil proceedings, showing they were in fact unnecessary in practice. An anecdotal survey of ATF's field divisions uncovered no instances in which the presumptions were cited in civil proceedings in the time since the EIB rule became effective. ATF may revoke a license or deny a renewal application in a civil administrative proceeding if the licensee willfully violated 18 U.S.C. 922(a)(1)(A), which prohibits a person from engaging in the business as a dealer without a license, or aided and abetted others in willfully engaging in the business of dealing in firearms without a license. Since publishing the EIB rule in April 2024, ATF has brought two such proceedings against licensees. A review of these proceedings reflects that none of the presumptions set forth in 27 CFR 478.13 were cited or referenced by ATF in support of these actions. Given that the presumptions have not actually proven to be significant to or applied in ATF proceedings, and likewise do not appear to have had the expected effect of increasing the number of licensees, *see infra*, rescinding the presumptions is warranted to preserve

public confidence in ATF proceedings and avoid a perception that such proceedings are or may be biased.

Moreover, mandatory presumptions have little role in the enforcement of the GCA's provisions against dealing without a license. The EIB rule suggested that the presumptions could be used "to determine whether to deny or revoke a federal firearms license." 89 FR 28969. But ATF's administrative adjudications, which usually involve license revocations, operate only on those who are already licensed. The EIB rule also suggested that they might have application "in civil asset forfeiture proceedings," 89 FR 28969, but ATF has no anecdotal or statistical information that indicates it has used any of the presumptions in a civil forfeiture matter involving dealing without a license since the EIB rule was published. As a matter of policy, ATF has concerns about seizing property through the use of regulatory presumptions.

Individuals who engage in dealing without a license are primarily subject to criminal sanction. In criminal proceedings, the presumptions were intended to be useful to courts to the extent that jury instructions could incorporate permissible inferences if the case involved a fact pattern that matched one of the presumptions. 89 FR 28976, 28982, 29014. But ATF is not aware of the presumptions facilitating criminal enforcement. As the EIB rule recognized, *see* 27 CFR 478.13(h), mandatory presumptions cannot be employed in criminal proceedings. *See Sandstrom v. Montana*, 442 U.S. 510 (1979). Further, as with the civil revocation proceedings mentioned above, ATF is not aware of any criminal proceedings where presumptions have been invoked as permissible inferences since the EIB rule was published. Instead of presumptions or permissive inferences, judges may simply instruct jurors on the factors relevant to determining whether someone is engaged in the business—an instruction that judges already give. *See, e.g.*, Pattern Jury Instruction, 5th Circuit, 2024 922(a)(1)(A)

"engaged in the business";[14] Pattern Jury Instructions, 9th Circuit, 14.3 - 922(a)(1)(A).[15]

*Definition's scope*

Other aspects of the EIB rule may create confusion around conduct that falls outside the GCA's definition of being engaged in the business. For example, as discussed in the EIB rule, courts have stated that an isolated firearm transaction would not require a license when other factors were not present.[16] Nor are persons engaged in the business when they engage in repeated sales of firearms if the predominant intent is something other than earning a profit; for example, collectors who buy and sell repeatedly to enhance their personal collections. *See* 18 U.S.C. 921(a)(21)(C). In these circumstances, the GCA does not require persons to obtain a license. Congress made a considered judgment that it did not intend federal law to extend to the noncommercial, intrastate market. *See* GCA, Pub. L. No. 90-618, sec. 101, 82 Stat. 1213, 1213-14 (1968) (reenacted chapter analysis without change) (declaring that the GCA was enacted to "provide for better control of the interstate traffic of firearms" and that Congress' purpose in creating the GCA was "not . . . to place any undue or unnecessary federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms")

ATF has been diligent in providing guidance to the licensed and unlicensed

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[14] A number of factors may be considered in determining whether a defendant was "engaged in the business" of dealing in firearms, including: (1) the quantity and frequency of sales; (2) the location of the sales; (3) conditions under which the sales occurred; (4) the defendant's behavior before, during, and after the sales; (5) the price charged; (6) the characteristics of the firearms sold; and (7) the intent of the seller at the time of the sales. *United States v. Brenner*, 481 F. App'x 124, 127 (5th Cir. 2012) (explaining that "the jury must examine all circumstances" in determining whether the defendant was "engaged in the business" of dealing in firearms); *see also United States v. Garcia*, No. 21-51065, 2023 WL 116727, *1 (5th Cir. Jan. 5, 2023) (for recent application).

[15] The Government must prove beyond a reasonable doubt that a defendant "engaged in a greater degree of activity than the occasional sale of a hobbyist or collector, and that [the defendant] devoted time, attention, and labor to selling firearms" as a trade or business with the intent of making profits through the repeated purchase and sale of firearms. *See United States v. King*, 735 F.3d 1098, 1106 (9th Cir. 2013) (quoting 18 U.S.C. 921(a)(21)(C)). For a person to engage in the business of dealing in firearms, it is not necessary to prove an actual sale of firearms.

[16] 89 FR 28976 (*citing United States v. Carter*, 203 F.3d 187, 191 (2d Cir. 2000) ("A conviction under 18 U.S.C. § 922(a) ordinarily contemplates more than one isolated gun sale.")); *United States v. Swinton*, 521 F.2d 1255, 1259 (10th Cir. 1975) ("Swinton's sale [of one firearm] to Agent Knopp, standing alone, without more, would not have been sufficient to establish a violation of Section 922(a)(1). That sale, however, when considered in conjunction with other facts and circumstances related herein, established that Swinton was engaged in the business of dealing in firearms." (internal citation omitted)).

communities to ensure they consistently apply the legal standards associated with licensing requirements.[17] Similarly, as the EIB rule explained, there is an established set of case law that clarifies the factors courts consider regarding whether an individual needs to be licensed. *See, e.g.*, 89 FR 28976–77, 28978–79, & nn.67–68, 72, 75–77, 82.

ATF recognizes that there is no bright line at which a person may cross the threshold from engaging in personal sales to being engaged in the business of dealing firearms. The GCA's definition of "engaged in the business" is a standard, not a rule. The standard must be applied to the factual scenario of each case. And as with any standard, there are paradigm cases on either side, but no perfectly defined line between them. Nor is there any magic number of sales that can make a person "engaged in the business." 89 FR 29016. Persons who sell two firearms can be engaged in the business, if they couple that sale with labor and intent to engage in repeated commercial transactions for profit.[18] Persons who sell 50

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[17] *See* ATF, *FFL Newsletter* at 9 (July 2017), https://www.atf.gov/media/28911/download [https://perma.cc/34FE-F9TP] (gun show guidelines); ATF, *Important Notice to FFLs and Other Participants at Gun Shows,* ATF Information 5300.23A (Rev. June. 2021), https://www.atf.gov/firearms/docs/guide/important-notice-dealers-and-other-participants-gun-shows-atf-i-530023a/download [https://perma.cc/4PSR-VVD8]; ATF Revised Ruling 69-59, *Sales of firearms and ammunition at gun shows* (1969), https://www.atf.gov/firearms/docs/ruling/1969-59-gunshow-sales-non-licensed-premises/download [https://perma.cc/A9D4-5RKZ]; ATF, *How may a licensee participate in the raffling of firearms by an unlicensed organization?,* https://www.atf.gov/firearms/questions-and-answers?page=*10* (last reviewed May 22, 2020); ATF, *FFL Newsletter* at 8-9 (June 2021), https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensee-ffl-newsletter-june-2021/download (addressing conduct of business at firearm raffles); Letter for Pheasants Forever, from Acting Chief, Firearms Programs Division, ATF, at 1-2 (July 9, 1999) (addressing nonprofit fundraising banquets); ATF, *FFL Newsletter* at 4-5 (Feb. 1999), https://www.atf.gov/media/28801/download [https://perma.cc/36R3-RCB9] (addressing gun shows and events). *See* ATF, *FFL Newsletter* at 5-6 (June 2010), https://www.atf.gov/media/28856/download [https://perma.cc/LKC9-46BK] (flea market guidelines). *See* ATF, *FFL Newsletter* at 8 (June 2021), https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensee-ffl-newsletter-june-2021/download [https://perma.cc/H5KY-5G9T] (addressing internet sales of firearms); ATF, *FFL Newsletter* at 3 (Sept. 2016), https://www.atf.gov/media/28906/download [https://perma.cc/KY89-FRMZ] (addressing brokering firearms for exportation); ATF, *FFL Newsletter* at 6-7 (Mar. 2023); ATF, *FFL Newsletter* at 9 (June 2021), https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensee-ffl-newsletter-june-2021/download (discussing social media gun raffles) [https://perma.cc/H5KY-5G9T]; Letter for Outside Counsel to National Association of Arms Shows, from Chief, Firearms and Explosives Division, ATF, *Re: Request for Advisory Opinion on Licensing for Certain Gun Show Sellers* at 1 (Feb. 17, 2017); ATF, *ATF Federal Firearms Regulations Reference Guide*, ATF Publication 5300.4, Q&A L1, at 207-08 (2014), https://www.atf.gov/firearms/docs/guide/federal-firearms-regulations-reference-guide-2014-edition-atf-p-53004/download [https://perma.cc/KD35-AEXU]; ATF, *FFL Newsletter* at 3 (May 2001), https://www.atf.gov/media/28811/download [https://perma.cc/46KY-3VUM] [ (addressing auctioning firearms); ATF, *FFL Newsletter* at 7 (1990), https://www.atf.gov/media/28756/download [https://perma.cc/L8QT-VTX6] (addressing auctioning firearms); and Letter for Editor, CarPac Publishing Company, from Acting Assistant Director (Regulatory Enforcement), ATF, at 1-2 (July 26, 1979).

[18] *See King*, 735 F.3d at 1107.

firearms may not be engaged in the business if they are liquidating their personal collections, at least in the absence of facts militating in the opposite direction.[19] As the Supreme Court has recognized, Congress may legislate "us[ing] imprecise terms," *Sessions v. Dimaya*, 548 U.S. 148, 159 (2018), or a "qualitative standard," *Johnson v. United States*, 576 U.S. 591, 604 (2015).

The core concept of being engaged in the business is clear: the intent to engage in a course of repeated buying and selling predominantly motivated by profit. 18 U.S.C. 921(a)(21)(C). Individuals often meet this standard without question, particularly in cases that lead to criminal prosecutions. In addition, criminal prosecutions under the GCA require a showing of a willfulness mens rea, 18 U.S.C. 924(a)(1)(D), which requires showing that an individual acted with knowledge that the individual's conduct was unlawful. *See Bryan v. United States*, 524 U.S. 184, 189 (1998) (maintaining that "the willfulness requirement of § 924(a)(1)(D) requires knowledge that the conduct is unlawful"). With respect to EIB, Congress's preference for an effort- and intent-based definition, over a bright numerical threshold, does not merit retaining these presumptions as part of the definition or other supposed clarifications in the EIB rule.

*Increasing licensees and background checks*

Some critics incorrectly suggested that the prior Administration used the EIB rule to try to establish "universal background checks" by expanding the statutory definition to capture additional transactions as retail sales requiring a license.[20] But, the GCA allows a

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[19] *See* 18 U.S.C. 921(a)(22); *see also, e.g.*, *United States v. Mulholland,* 702 F. App'x 7, 12 (2d Cir. 2017) ("The definition does not extend to a person who makes occasional sales for a personal collection or hobby, *id.*, and the government need only prove that a person was 'ready and able to procure [firearms] for the purpose of selling them from time to time.'" (quoting *United States v. Nadirashvili*, 655 F.3d 114, 199 (2d Cir. 2011)). *But see United States v. Brenner*, 481 F. App'x 124, 127 (5th Cir. 2012) (defendant argued he was liquidating personal collection, but court held engaged in the business due to facts on sales frequency, location, profit margins, secretive sales and payments, and references to firearms "coming in" or as "brand new.").

[20] *See* Devan Cole & Hannah Rabinowitz, *Biden administration finalizes rule to close 'gun show loophole' in effort to combat gun violence*, CNN Politics (Apr. 11, 2024), https://www.cnn.com/2024/04/11/politics/gun-show-loophole-rule-finalized-biden-admin; *see also* Martha Minow, *Not Born a Democracy: Constitutional Preconditions*, 67 Wm. & Mary L. Rev. 135, 172 n.176 (2025) (explaining that the Biden Administration intended the executive order "to move the United States as close to universal background checks as possible without additional legislation").

non-licensee to transfer a firearm to another non-licensee within the same state without conducting a background check.[21] Both the GCA and FOPA left the noncommercial, intrastate market primarily regulated by state law. BSCA did not change that basic decision. BSCA was designed to provide clarification by changing the wording of the statutory definition about when a person should be licensed. According to BSCA's sponsors, the Act's change to the definition was driven by "confusion about the GCA's definition of 'engaged in the business,' as it pertained to individuals who bought and resold firearms repetitively for profit, but possibly not as the principal source of their livelihood."[22] The sponsors "maintain[ed] that these changes clarif[ied] who should be licensed, eliminating a 'gray' area in the law, ensuring that one aspect of firearms commerce is more adequately regulated."[23] The EIB rule thus could not, and did not, impose universal background check requirements. And, as discussed, in light of Congress' changes to carefully crafted clarifications of the statutory language through BSCA's amendments, it is unnecessary to supplement or confuse the statutory language with further regulatory language.

Additionally, ATF has determined that the rule proved ineffective in its attempt to increase the number of dealer licenses. In the time since the EIB rule went into effect, ATF has not seen an increase in licenses and background checks. ATF has reviewed the number of new applications the Federal Firearms Licensing Center received for Type 01 licenses (Dealer in Firearms Other Than Destructive Devices) for fiscal years ("FYs") 2021 through

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[21] 18 U.S.C. 922(a)(3), (5) (requiring license to sell out of State); 922(t) (requiring licensees to conduct a background check).

[22] William J. Krouse, Cong. Rsch. Serv., IF12197, *Firearms Dealers "Engaged in the Business"* 2 (2022).

[23] *Id.*; 168 Cong. Rec. H5906 (daily ed. June 24, 2022) (Statement of Rep. Jackson Lee) ("[O]ur bill would . . . further strengthen the background check process by clarifying who is engaged in the business of selling firearms and, as a result, is required to run background checks."); 168 Cong. Rec. S3055 (daily ed. June 22, 2022) (Statement of Sen. Murphy) ("We clarify in this bill the definition of a federally licensed gun dealer to make sure that everybody who should be licensed as a gun owner is. . . . [The definition] is admittedly confusing. So we simplified that definition and hope that will result—and I believe it will result—in more of these frequent online gun sellers registering, as they should, as federally licensed gun dealers which then requires them to perform background checks."); *see also* Letter for Director, ATF, *et al.*, from Sens. John Cornyn and Thom Tillis at 2–3 (Nov. 1, 2022) ("BSCA provides more clarity to the industry for when someone must obtain a federal firearms dealers license. In Midland and Odessa, Texas, for example, the shooter—who at the time was prohibited form possessing or owning a firearm under federal law—purchased a firearm from an unlicensed firearms dealer.").

2025, the four years preceding the EIB rule, and the one year since the rule was published. *See* Table 1. Once issued, a federal firearms license is valid for a three-year period unless terminated sooner, so there are more total Type 01 licensees in each year than the number of applications persons submit to ATF in the same year. 18 U.S.C. 923(c), 27 CFR 478.49.

**Table 1. Number of Type 01 dealer applications 2021-2025**

| Fiscal year | Type 01 applications | Total Type 01 licensees |
|---|---|---|
| 2021 | 7,445 | 52,993 |
| 2022 | 5,619 | 52,173 |
| 2023 | 4,544 | 50,314 |
| 2024 | 4,350 | 47,776 |
| 2025 | 4,160 | 46,072 |

As Table 1 indicates, since FY 2021, there has been a decrease in both applications for Type 01 licenses and the total number of Type 01 licensees in each fiscal year. The EIB rule was intended to facilitate the recognition by more people that they must acquire a license, which ATF expected would increase the number of persons becoming licensed as dealers. However, that expected outcome has not occurred since the EIB rule became effective. Instead, the number of Type 01 applications filed after the EIB rule continued to decline, as did the number of Type 01 licensees. In FY 2024, ATF received 4,350 Type 01 applications and listed 47,776 Type 01 licensees. In FY 2025, ATF received a total of 4,160 Type 01 applications and listed 46,072 Type 01 licensees. As a result, contrary to ATF's intended expectation from the EIB rule, the EIB rule did not result in an increase in Type 01 licensees.

*Personal collection*

The EIB rule created a general definition of "personal collection" in 27 CFR 478.11 to identify the kinds of firearms that fall into the statutory exception to the definition of engaged in the business. Section 478.13(a) states that the term "engaged in the business" does not "include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of the person's personal collection of firearms." This exception mirrors the statutory text, which

created this narrow, predetermined exception to the general rule that applies to all firearms (and which still only requires a license if a person devotes time, attention, and labor to repetitively purchasing and reselling firearms in the regular course of business with predominant intent to profit). This narrow statutory exception to the general rule was created by Congress to recognize that persons who collect firearms or own them for hobby purposes might occasionally purchase and resell those firearms to enhance or liquidate their collection and would be unlikely to be doing so as a profit-making course of business.

The general rule in the statute sets out a test for determining when firearms are being sold in such a manner as to qualify as being engaged in the business. That test includes, as a key element, intending predominantly to earn a profit from purchasing and reselling firearms—without distinguishing what kind of firearm, who owns the firearm, or listing all the other reasons persons might own the firearms. It is only in the exception that Congress specified a particular set of firearms owned for particular purposes—personal collecting or hobbies—which, if resold only occasionally, would automatically be treated as not being engaged in the business.

The EIB rule added two parts to the definition of "personal collection" in § 478.11. First, the rule defined "personal collection" to mean "[p]ersonal firearms that a person accumulates for study, comparison, exhibition (*e.g.*, collecting curios or relics, or collecting unique firearms to exhibit at gun club events), or for a hobby (*e.g.*, noncommercial, recreational activities for personal enjoyment, such as hunting, skeet, target, or competition shooting, historical re-enactment, or noncommercial firearms safety instruction)." Second, the rule provided: "In addition, the term shall not include firearms accumulated primarily for personal protection: *Provided*, that nothing in this definition shall be construed as precluding a person from lawfully acquiring firearms for self-protection or other lawful personal use." There are strong arguments that the rule improperly attempted to narrow the categories of accumulated firearms that would constitute a collection.

The EIB rule adopted a narrower conception of what purposes in gathering firearms might qualify for a "personal collection" by reading "personal collection" in 18 U.S.C. 921(a)(21)(C) with reference to the definition of "collector" in section 921(a)(13). On reflection, ATF believes that that interpretation overreads section 921(a)(13). Although the words have the same root ("collect"), the definition of "personal collection" in section 921(a)(21)(C) materially differs from the definition of "collector" in section 921(a)(13) because of the separate functions that each provision serves. The function of "collector" and "licensed collector" in paragraph (a)(13) is to designate a person who collects a limited class of historical firearms (those defined as "curios or relics"), for which the GCA establishes special licensing rules to facilitate noncommercial interstate buying and selling. In contrast, the function of "personal collection" in section 921(a)(21)(C) is to create a safe harbor for when an individual sells multiple firearms that he had previously accumulated for personal, noncommercial use—with for personal, noncommercial use being the key distinction. Consequently, there is no inconsistency between understanding "personal collection" to mean firearms held by a person for private, noncommercial purposes, while recognizing that certain types of collectors do not qualify as statutory "collectors" and, thus, cannot utilize the special licensing provisions for those who collect curio and relic firearms. This definition also harmonizes the GCA provision for licensees to have a "personal collection of firearms," 18 U.S.C. 923(c)—that is, firearms the licensee maintains for personal, noncommercial use.

The EIB rule rested its amendments, in part, on narrow definitions of "collection." *See* 89 FR 28980 and n.88 (relying on Merriam-Webster's definition to restrict a personal collection to only those objects "gathered for study, comparison, or exhibition or as a hobby"); 89 FR 29038, n.216 (relying on Encyclopedia Britannica's definition, ''a group of interesting or beautiful objects brought together in order to show or study them or as a hobby''). Given these narrow definitions, the Department previously concluded that a personal collection is limited to firearms "that a person accumulates for study, comparison,

exhibition . . ., or for a hobby." 27 CFR 478.11. Indeed, the Department specifically excluded "firearms accumulated primarily for personal protection" as not part of a personal collection. *Id.*

ATF now believes that the definitions identified by the EIB rule are too restrictive. Individuals are engaged in the business when their relationship with the firearms is primarily commercial—they are buying and selling for profit rather than for personal, noncommercial use for self-defense, target shooting, gun collecting, hunting, and other lawful uses. To avoid any contrary suggestion, ATF proposes rescinding subsection (1) of the definition.

Although ATF proposes rescinding subsection (1) of the definition of "personal collection," ATF believes subsection (2) of the definition, which defines licensee personal collections, clearly and informatively sets out the actions licensees can take to distinguish a personal firearm from a business one and comply with 18 U.S.C. 921(a)(21)(C). This aspect of the definition provides greater clarity that aids the public in complying with the statute, and ATF is therefore proposing to retain this portion of the definition.

*Former licensee inventory*

In conjunction with the licensee personal collection definition, the EIB rule also added a definition in § 478.11 for "former licensee inventory" and set out guidelines a licensee must follow to dispose of its firearms inventory when it is discontinuing business, particularly if its license is revoked. The regulation treats all firearms purchased as part of a licensee's business inventory while licensed as retaining that classification indefinitely because "they were purchased repetitively before the license was terminated as part of a licensee's business inventory with the predominant intent to earn a profit." This definition, together with §§ 478.57 (discontinuance of business) and 478.78 (operations by licensee after notice), limits a former licensee to disposing of the inventory within 30 days after it discontinues business and effectively prevents former licensees from reclassifying inventory purchased repetitively with the intent to resell for profit while licensed as personal firearms

in a "personal collection" after they become unlicensed. *See* 27 CFR 478.57(b)(2) (providing that a licensee may "[t]ransfer the former licensee inventory to a responsible person of the former licensee to whom the receipt, possession, sale, or other disposition is not prohibited by law," but that any such transfer "does not negate the fact that the firearms were repetitively purchased, and were purchased with the predominant intent to earn a profit by repetitive purchase and resale"). The EIB rule explicitly authorized former licensees to sell firearms only (1) "within 30 days [of termination of a license], or such additional period approved by the Director for good cause," or (2) on an "occasional" basis "thereafter to a licensee." 27 CFR 478.78(b)–(c). In other words, outside the 30-day window (and barring an extension for good cause), former licensees were restricted from selling business inventory to anyone, except for occasional sales to current FFLs.

Although some process for addressing the inventory of former licensees is appropriate, the effectively permanent restraint on firearms sales after the 30-day period is arguably unlawful. For example, upon winding down operations, a former licensee could absorb twenty firearms from his business inventory into his personal collection in good faith. A former licensee who sold one or two such firearms years later to a non-licensee would not be engaged in the business under the statutory definition, and the GCA does not by its terms restrict occasional sales of such firearms only to other FFLs. Such conduct stands in contrast to a former licensee who immediately continues selling firearms acquired as business inventory in repeated transactions after his license is discontinued. ATF recognizes concerns about former licensees attempting to hold "fire sales" of large swathes of inventory without adhering to recordkeeping and background check requirements. However, such scenarios are clearly covered by statutory language, which prohibits engaging in the business without a license.[24] By contrast, a situation where a former licensee sells an occasional firearm in a

[24] *See Gilbert v. Bangs*, 481 F. App'x 52 (4th Cir. 2012); *United States v. Kish*, 424 F. App'x 398 (6th Cir. 2011).

private sale years later does not constitute the repetitive purchasing and selling that the GCA was intended to cover. The GCA does not authorize former licensees to engage in the business. But it also does not impose encumbrances on all firearms that were previously part of a business's inventory.

For all these reasons, this rule proposes to amend regulations in 27 CFR part 478 that were created or changed by the EIB rule as described below.

*B. Proposed revisions*

For the reasons discussed above, ATF is proposing the following regulatory changes related to the definition of engaged in the business as a dealer as implemented in §§ 478.11 and 478.13 via the EIB rule. ATF proposes to (1) move the current definition of "engaged in the business as a dealer in firearms other than a gunsmith or pawnbroker," set forth in §§ 478.13(a) to 478.11, and (2) rescind § 478.13(b)–(h). Paragraphs (b) through (h) of § 478.13 include: (b) a statement that whether a person is engaged in the business as a dealer in firearms other than a gunsmith or a pawnbroker is a fact-specific inquiry, (c) specific fact-patterns establishing presumption that a person is engaged in the business as a dealer, (d) the definition of "predominantly earn a profit," (e) a list of conduct that does not support a presumption, (f) evidence that may be used to rebut a presumption, (g) clarification that itemized presumptions, conduct, and rebuttal evidence are not exhaustive lists, and (h) clarification that the rebuttable presumptions do not apply to criminal proceedings.

ATF also proposes to retain the definition of "predominantly earn a profit" from § 478.13, with some revisions, and move it to § 478.11. The rest of § 478.13 would be removed, except as provided in the following paragraph. ATF is also proposing to change the definition of "personal collection" and remove the definition of "former licensee inventory," both in § 478.11. These proposed changes are described in detail below.

ATF proposes removing all of § 478.13 except: (1) the portion of the definition of "engaged in the business as dealer in firearms other than gunsmith or pawnbroker" that

duplicates statutory language in 18 U.S.C. 921(a)(21)(C); (2) the added exception for auctioneers who provide only auction services on a commission by assisting persons to liquidate firearms in an estate-type sale;[25] and (3) a revised version of the definition of "predominantly earn a profit." Because these remaining portions of § 478.13 would no longer be long enough to warrant a separate definition section, ATF proposes moving all three of these remaining portions from § 478.13 to § 478.11 (meaning of terms), where other relatively short definitions are located.

ATF would place the definition of engaged in the business as a dealer under paragraph (3) in the definition of "engaged in the business," and the existing language in paragraph (3), which references § 478.13, would be removed. The paragraph would retain the same heading and would read, "A person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms. The term does not include a person who makes occasional sales, exchanges, or purchases of firearms to enhance a personal collection or for a hobby, or who sells all or part of the person's personal collection of firearms."

ATF would also move the auctioneer exception to paragraph (3) within the definition of "engaged in the business" under § 478.11, at the end of the new paragraph described above. Historically, licensees and non-licensees seeking guidance on the proper and lawful way to liquidate firearms, both in the regular course of their business or as an isolated occurrence, have commonly raised questions about auctioneers. Because ATF has regularly provided consistent guidance on what type of auction activity crosses the threshold to

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[25] *See* ATF, *Does an Auctioneer Who Is Involved in Firearms Sales Need a Dealer's License?,* https://www.atf.gov/firearms/questions-and-answers?page=2 (last reviewed July 10, 2020); ATF, *ATF Federal Firearms Regulations Reference Guide,* ATF Publication 5300.4, Q&A L1, at 207-08 (2014), https://www.atf.gov/firearms/docs/guide/federal-firearms-regulations-reference-guide-2014-edition-atf-p-53004/download [https://perma.cc/KD35-AEXU]*;* ATF, *FFL Newsletter* at 3 (May 2001), https://www.atf.gov/media/28811/download [https://perma.cc/46KY-3VUM] *;* ATF Ruling 96-2, *Engaging in the Business of Dealing in Firearms (Auctioneers)* (Sept. 1996), https://www.atf.gov/file/55456/download [https://perma.cc/RCJ2-QA9H]*;* ATF, *FFL Newsletter* at 7 (1990), https://www.atf.gov/media/28756/download [https://perma.cc/L8QT-VTX6]*;* Letter for Editor, CarPac Publishing Company, from Acting Assistant Director (Regulatory Enforcement), ATF, at 1–2 (July 26, 1979).

constitute engaging in the business of dealing in firearms, the portion of the definition that incorporates that exception into the regulation provides definitional clarity to the public and licensed community. Therefore, ATF proposes retaining the portion of § 478.13 that codifies ATF's historical position, thus ensuring consistency for industry members. Modifying or removing this part of the definition would likely cause undue and unnecessary confusion. This proposed change would therefore add the following text to the end of paragraph (3): "In addition, the term does not include an auctioneer who provides only auction services on commission to assist in liquidating firearms at an estate-type auction, as long as the auctioneer does not purchase the firearms or take possession of the firearms for sale or consignment."

ATF would move the text of the definition in § 478.13 of "predominantly earn a profit" to a location under the same definitional heading in § 478.11, and it would remove the text currently under that heading, which references § 478.13. It is necessary to retain this definition to distinguish between, on the one hand, what constitutes engaging in the business as a dealer in firearms other than a gunsmith or pawnbroker; and, on the other hand, engaging in the business as a gunsmith, pawnbroker, manufacturer, or importer—all of which continue to require the "principal objective of livelihood and profit" that applied to dealers prior to BSCA. The definition of "predominantly earn a profit" tracks the statutory definition; however, ATF proposes making a minor change to one sentence of the definition, so it is easier to read, without changing the meaning. Specifically, ATF proposes changing the sentence, "*Provided*, that proof of profit, including the intent to profit, shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism," to "However, proof of profit, including the intent to profit, is not required in cases in which the person engaged in regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism." This change is in line with one of the purposes for ATF's implementing regulations, which is to aid the public in

understanding and complying with statutory provisions, and it is consistent with laws requiring plain writing. It does not modify or expand on the statutory meaning.

In addition, ATF proposes to remove the last sentence of the definition as it currently exists in § 478.13, which reads, "For purposes of this section, a person may have the intent to profit even if the person does not actually obtain the intended pecuniary gain from the sale or disposition of firearms," because this sentence is not in the statutory definition. The proposed new definition of "predominantly earn a profit" would thus be "The intent underlying the sale or disposition of firearms is predominantly one of obtaining pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection. However, proof of profit, including the intent to profit, is not required in cases in which the person engaged in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism."

In addition to the above changes to § 478.13, ATF proposes two changes directly to § 478.11. Specifically, for the reasons discussed in section II.A of this preamble, ATF proposes removing paragraph (1) of the definition of "personal collection (or personal collection of firearms, or personal firearms collection)," moving paragraph (2) up to replace paragraph (1) with changes necessary to conform it to regulatory paragraph designations, changing the definition's title to reflect the remaining content, and removing the definition "former licensee inventory" entirely. The proposed heading for the definition of "personal collection (or personal collection of firearms, or personal firearms collection)" would instead be "licensee personal collection (or personal collection of licensee)." The rest of the definitional text would remain the same as currently in § 478.13, but the paragraph designation would change because it would no longer be paragraph (2).

In addition, the rule proposes to make changes to § 478.57 (Discontinuance of business). The proposed rule would remove from paragraphs § 478.57(b)(2) and (c) the relevant sentences that effectively restrict former licensees from reselling their firearms

without being presumed to be engaged in the business. Specifically, it would remove from § 478.57(b)(2) the sentence that reads: "Any such transfer, however, does not negate the fact that the firearms were repetitively purchased, and were purchased with the predominant intent to earn a profit by repetitive purchase and resale." And it would remove from § 478.57(c) the second sentence that provides that a former FFL who resells any of its former business inventory is subject to the provisions of § 478.13. Because this rule proposes to remove § 478.13, the provisions in these paragraphs would no longer be relevant. And because these provisions are also found in § 478.78 (Operations by licensee after notice), this rule proposes to remove from § 478.78(b)(2) and (c) the same sentences.

## 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 proposed rule would retain the definition of "engaged in the business" as specifically revised and defined in BSCA. In addition, this proposed rule would revise 27 CFR 478.13 to rescind paragraphs (b)–(h), which includes rebuttable presumption fact patterns as to whether a person is engaged in the business as a dealer and whether a person has predominant intent to profit, a list of conduct that does not support a presumption, evidence that may be used to rebut a presumption, and other provisions related to applying the presumptions. In addition, the rule also proposes to retain the definition of "predominantly earn a profit" with some revisions, to change the definition of "personal collection" to apply only to licensee personal collections and remove the definition of

"former licensee inventory." These provisions were included in the EIB rule to aid persons in understanding and applying the statutory change from BSCA. In addition, the EIB rule did not result in the anticipated increase in the number of licensees. As a result, removing or revising these additional provisions does not generate a cost to the public.

The Office of Management and Budget ("OMB") has determined that, although this rule would not be economically significant under section (3)(f)(1) of Executive Order 12866, it would be 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 proposed rule would revert the definition of "engaged in the business" to the one outlined specifically by statute, without the additional provisions added by the previous rule. As a result, this proposed rule would provide qualitative benefits to the public in the form of reduced confusion and reduced concerns about perceived risk of over-enforcement, as well as qualitative costs in the form of potential increase in persons who should be licensed remaining unlicensed. This rule would not create quantifiable costs or burdens for the public.

***1. Need statement***

The EIB rule included provisions in addition to the statutory definitional change from BSCA, and those provisions did not result in the projected increase in licensees. As illustrated in Table 2, the number of all FFL applications has been decreasing since 2021. Between the time the NPRM for the EIB rule was published in 2023 and was later finalized in 2024, the number of applications for all FFLs decreased overall.

**Table 2. Number of FFL applications by year**

| Year | FFL applications |
|---:|---:|
| 2020 | 12,537 |
| 2021 | 13,879 |
| 2022 | 10,811 |
| 2023 | 9,237 |
| 2024 | 8,679 |
| 2025 | 8,648 |

The intended clarifying provisions instead created confusion and raised concerns by commenters on the rule that the provisions could be misapplied and misunderstood in ways that would constitute violations of law. As a result, ATF has determined that these provisions should be removed or revised and that the definition of engaged in the business as a dealer should be primarily limited to the statutory definition. The only way to make these regulatory adjustments is through a rulemaking.

***2. Cost Savings***

This proposed rule would align with the definition of "engaged in the business" as defined in the statute. As discussed in section II.A of this preamble, many firearms sales fall outside the GCA's definition of being engaged in the business. Nor are persons engaged in the business if they repeatedly buy and sell primarily in order to maintain and enhance their personal firearms collection rather than for profit. One of the qualitative cost savings of the proposed rule is that it would reduce confusion and reduce the perceived risk of over-enforcement. ATF, however, lacks the data necessary to quantify such savings.

Based on the historical data in Table 1 above, there were no incremental increases in FFL dealer applications in the year and a half since the EIB rule was published; therefore, the projected costs of that original rule, *see* 89 FR 29072–73 (analyzing expected costs for unlicensed persons to become licenses), were not incurred. Furthermore, this rule would maintain the minimum definitions as required by the statute. Costs arising from these statutory definitions were already accounted for in the EIB rule. As a result, this proposed rule would not have any quantifiable monetary cost savings.

***3. Disbenefits***

Potential qualitative disbenefits (i.e., adverse impacts) to this proposed rule may include a de minimis increase in risk to public safety. In the EIB rule, ATF described conditions in which an individual might be considered "engaged in the business" of selling firearms. Some individuals who might have been active firearms sellers prior to the EIB rule

might have refrained from selling firearms after the EIB rule out of concern that their conduct rose to the level of being "engaged in the business" because it would subject them to the GCA's requirements (e.g., record-keeping, conducting background checks, inspections). If parts of the regulations implemented by the EIB rule are rescinded, these persons might resume selling firearms actively without becoming licensed, just as they had prior to publication of the EIB rule. This could mean that any risks regarding unlicensed sellers that Congress perceived when initially enacting the GCA would not be addressed through regulations clarifying the GCA's requirements.

***4. Regulatory alternatives***

Alternative 1. Maintaining the status quo (the no-action alternative).

During the previous Administration, ATF published the EIB rule, in which ATF included the statutorily revised definition of engaged in the business as a dealer and additional regulatory provisions to further define and clarify the term and how persons could determine its application. Upon further consideration, ATF has determined that the ensuing confusion from these additional provisions may impose additional risks on members of the public, who might interpret the rule as prohibiting them from purchasing firearms for self-defense or protection and might make them feel chilled in purchasing and reselling personal firearms occasionally without predominant intent to profit, as intended by Congress. Because these provisions were added to ATF's regulations, they would remain in effect unless ATF were to engage in rulemaking to revise them. Therefore, ATF rejects maintaining the status quo as an alternative due to the risk of chilling lawful firearms activities.

Alternative 2. Rulemaking (the proposed alternative).

ATF considered the alternative of rulemaking to revise or remove non-statutorily required provisions in the current regulatory definition of engaged in the business as a dealer. This would cause the regulatory definition to consist primarily of the statutory definition as revised by Congress in BSCA. Based on historical data, there would be no additional

quantifiable costs or benefits incurred to the public from this proposed alternative. Revising these regulatory provisions may reduce confusion that the added regulatory provisions may have caused; however, it could conversely increase risk from active sellers, who are not licensed, who resume sales and thus do not conduct background checks to ensure that prohibited persons do not acquire firearms on the secondary market. Nevertheless, ATF believes that the potential impact on public safety is de minimis. A solution, such as guidance, would not have the same effect on existing regulatory provisions, as guidance cannot contradict the regulations. As a result, ATF has determined that rulemaking is the best alternative and the only way to remove the provisions that were causing confusion.

Alternative 3. Issuing guidance.

This alternative was considered but rejected. While this alternative would not impose any additional costs, it would not rescind the presumptions currently published in regulation or correct the other issues with the regulatory supplement to the "engaged in the business" definition. As mentioned above, maintaining the legal presumptions in regulations would continue to create concerns among the regulated public that ATF is illegitimately attempting to relieve the Government of its burden of proof in civil and administrative proceedings. One court has already opined that the presumptions are highly problematic because "they flip the statute on its head by requiring that firearm owners prove innocence rather than the government prove guilt."[26] Thus, ATF has determined that removing presumptions from the regulations avoids the risk that, in real-world practice, the presumptions could have been used to relieve the Government of its burden of proof. Leaving the presumptions in the regulations while issuing guidance alone would not remedy the problems as discussed. Therefore, issuing guidance as an alternative in lieu of removing the regulatory language at issue was rejected.

*B. Executive Order 14192*

[26] *Texas v. ATF*, 737 F. Supp. 3d at 442.

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. Although it would be a significant regulatory action as defined by Executive Order 12866, it would not impose total costs greater than zero. This proposed rule would provide qualitative benefits by reducing confusion and concerns about perceived over-enforcement, specifically entailing qualitative benefits to current and future firearm owners. Although it is possible that removing the proposed provisions would result in some risk to public safety from persons who would no longer feel constrained in dealing in firearms without a license, such a risk is qualitative and speculative, imposing no quantifiable costs. Therefore, as discussed above, this rule would not impose any additional quantifiable monetized costs, and total costs would be less than zero. ATF therefore expects this rule, if finalized as proposed, to qualify 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).

*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*

This proposed rule would 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 Director has determined that this proposed rule would 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.

*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 ("RFA"), 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, including a statement of the factual basis, 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. This proposed rule is deregulatory and would not impose any additional costs, including on small entities. The proposed rule would remove or amend certain provisions related to the definition of engaged

in the business as a dealer, the provisions of which expanded the scope of the definition beyond the statute. The confusion and perceptions about these provisions have caused many individuals to believe they might have to obtain a license in order to sell personal firearms from their personal collections, for example. Although the EIB rule anticipated that the rule would cause some persons operating unlicensed small businesses to become licensed as dealers of firearms, ATF—as explained above in section II.A of this preamble—has not observed an actual increase in the rate of licensure since the issuance of the EIB rule. In light of the EIB rule's apparent lack of effect on the operation of small businesses, ATF does not believe that repealing certain provisions of EIB rule as proposed in this rule would affect such businesses. Therefore, ATF does not believe that this proposed rule, if finalized, would have a significant economic impact on a substantial number of small entities. ATF nonetheless welcomes comments on any potential effects of this proposed rule on small entities.

*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 impact four existing information collections covered under the PRA. Although

this rule involves the existing information collections, the proposed changes to the rule would not add to or change the burden imposed on the information collection respondent as compared to existing, OMB-approved requirements.

*Licensing Information Collection Requirements ("ICRs")*

*Numbers and titles:* OMB control number 1140-0018, Application for a Federal Firearms License, ATF Form 5310.12/ 5310.16 ("Form 7/7CR"), and OMB control number 1140-0019, Application for a Federal Firearms License -- Renewal Application, ATF Form 5310.11 ("Form 8")

*Abstract:* 18 U.S.C. chapter 44 prohibits any person from engaging in the business of importing, manufacturing, or dealing in either firearms or ammunition without first obtaining a license to do so. These activities are licensed for a specific period. The statute also provides for a collector's license. Persons who need to obtain a license submit Form 7/7CR to ATF, and licensees who wish to continue to engage in the aforementioned firearms activities without interruption, must renew their license by filing Form 8 before the current license period expires.

*Purpose:* ATF uses Form 7 to identify the applicant and determine eligibility to obtain a firearms license, and ATF uses Form 8 to identify the applicant and determine eligibility to retain the license. Without these information collections, ATF would not be able to issue or renew licenses to persons required by law to have a license to engage in the business of dealing in firearms or shipping or transporting firearms in interstate or foreign commerce in support of that business, or acquire curio and relic firearms from out of state. The proposed rule does not change the requirements or purposes covered under these information collections.

*Record-keeping ICRs*

*Numbers and titles:* OMB control number 1140-0020, Firearms Transaction Record, ATF Form 5300.9 ("Form 4473"), and OMB control number 1140-0032, Records of

Acquisition and Disposition, Dealers of Type 01/02 Firearms, and Collectors of Type 03 Firearms

*Abstract:* 18 U.S.C. 922 and 923, and implementing regulations at 27 CFR 478.124, prohibit certain persons from shipping, transporting, receiving, or possessing firearms. All persons, including FFLs, are therefore prohibited from transferring firearms to such persons. FFLs are also subject to additional restrictions on disposing of a firearm to an unlicensed person under the GCA. For example, age and State of residence also determine whether a person may lawfully receive a firearm. Form 4473 enables FFLs to determine if they may lawfully sell or deliver a firearm to the prospective transferee, and to alert the buyer or other transferee of certain restrictions on receiving and possessing firearms. The licensee must determine the transaction's lawfulness and maintain proper records of the transaction. The GCA, 18 U.S.C. 923, also requires that licensees must keep records of each firearm they acquire and dispose of, and ATF implementing regulations in 27 CFR 478.23(c)(1) and (2) set forth the details required for those records, which are in addition to the Form 4473, the purpose of which is primarily for a licensee to determine whether the requested sale is lawful.

*Purpose:* The Form 4473 information collection aids licensees in obtaining the necessary information from which to make that determination and to use when submitting a required NICS background check, and also serves as a record of the transaction, all of which are necessary for the licensee to comply with the statutory requirements. The acquisition and disposition record-keeping requirements ICR permits ATF to examine records during inspections to ensure that licensees are complying with statutory and regulatory requirements, and also serve as records licensees may search in response to a crime-gun trace request from law enforcement agencies conduction investigations into crimes in which a firearm was used.

**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-AB01 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 identifying 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 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-AB01. 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 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, 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-AB01).

**Severability**

Consistent with the Administrative Procedure Act, the issues raised in this proposed rule may be finalized, or not, independently of each other, after consideration of comments received. ATF has determined that this proposed rule implements and is fully consistent with governing law. However, in the event this proposed rule is finalized, if any provision of that final rule, an amendment or revision made by that rule, or the application of such provision or amendment or revision to any person or circumstance, is held to be invalid or unenforceable by its terms, the remainder of that final rule, the amendments or revisions made by that rule, and application of the provisions of the rule to any person or circumstance shall not be affected and shall be construed so as to give them the maximum effect permitted by law.

**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. Amend § 478.11 by:

a. Revising paragraph (3) of the definition of "engaged in the business" ("dealer in firearms other than a gunsmith or a pawnbroker"); the definition of "personal collection (or personal collection of firearms, or personal firearms collection)", including its title; and the

definition of "predominantly earn a profit"; and

b. Removing the definition of "former licensee inventory".

The revisions read as follows:

**§ 478.11 Meaning of Terms**

*Engaged in the business--* * * *

* * * * *

(3) *Dealer in firearms other than a gunsmith or a pawnbroker*. A person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms. The term does not include a person who makes occasional sales, exchanges, or purchases of firearms to enhance a personal collection or for a hobby, or who sells all or part of the person's personal collection of firearms. In addition, the term does not include an auctioneer who provides only auction services on commission to assist in liquidating firearms at an estate-type auction, as long as the auctioneer does not purchase the firearms or take possession of the firearms for sale or consignment.

* * * * *

*Licensee personal collection (or personal collection of licensee)*. In the case of a firearm imported, manufactured, or otherwise acquired by a licensed manufacturer, importer, or dealer, the personal collection includes only firearms that were:

(a) Acquired or transferred without the intent to willfully evade the restrictions placed upon licensees by 18 U.S.C. chapter 44;

(b) Recorded by the licensee as an acquisition in the licensee's acquisition and disposition record in accordance with §§ 478.122(a), 478.123(a), or 478.125(e) (unless acquired prior to licensure and not intended for sale);

(c) Recorded as a disposition from the licensee's business inventory to the licensee's personal collection or otherwise as a personal firearm in accordance with §§ 478.122(a),

478.123(a), or 478.125(e) (unless acquired prior to licensure and not intended for sale);

(d) Maintained in such personal collection or otherwise as a personal firearm (whether on or off the business premises) for at least one year from the date the firearm was so transferred, in accordance with 18 U.S.C. 923(c) and 27 CFR 478.125a; and

(e) Stored separately from, and not commingled with, the business inventory. When stored or displayed on the business premises, the personal collection and other personal firearms must be appropriately identified as "not for sale" (*e.g.*, by attaching a tag).

* * *

*Predominantly earn a profit*. The intent underlying the sale or disposition of firearms is predominantly one of obtaining pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection. However, proof of profit, including the intent to profit, is not required in cases in which the person engaged in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism.

* * * * *

**§ 478.13 [Removed and Reserved]**

3. Remove and reserve § 478.13.

**§ 478.57 [Amend]**

4. Amend § 478.57 by removing from paragraphs (b)(2) and (c) the second sentence.

The revisions read as follows:

§ 478.57 Discontinuance of business.

* * * * *

(b) * * * * *

(2) Transfer the former licensee inventory to a responsible person of the former licensee to whom the receipt, possession, sale, or other disposition is not prohibited by law.

(c) Transfers of former licensee inventory to a licensee or responsible person in accordance with paragraph (b)(1) or (2) of this section shall be appropriately recorded as

dispositions, in accordance with §§ 478.122(b), 478.123(b), or 478.125(e), prior to delivering the records after discontinuing business consistent with § 478.127.

*  *  *  *  *

**§ 478.78 [Amend]**

5. Amend § 478.78 by removing from paragraphs (b)(2) and (c) the second sentence.

The revisions read as follows:

**§ 478.78 Operations by licensee after notice.**

*  *  *  *  *

(b) *  *  *  *  *

(2) Transfer the former licensee inventory to a responsible person of the former licensee to whom the receipt, possession, sale, or other disposition is not prohibited by law.

(c) Transfers of former licensee inventory to a licensee or responsible person in accordance with paragraph (b)(1) or (2) of this section shall be appropriately recorded as dispositions, in accordance with §§ 478.122(b), 478.123(b), or 478.125(e), prior to delivering the records after discontinuing business consistent with § 478.127.

*  *  *  *  *

**Robert Cekada,**
*Director.*
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