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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR part 478

[Docket No. ATF-2026-0337; ATF No. 2025R-24P]

RIN 1140-AB04

Revising Definitions of "Adjudicated as a Mental Defective" and "Committed to a Mental Institution"

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") proposes amending Department of Justice ("Department") regulations to update the definitions of "adjudicated as a mental defective" and "committed to a mental institution."

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-AB04, 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-AB04*.

Instructions: All submissions must include the agency name and number (RIN 1140-AB04) for this notice of proposed rulemaking ("NPRM" or "proposed rule"). ATF may post all properly completed comments received from either of the methods described above, without change, to the federal e-rulemaking portal, *https://www.regulations.gov*. This includes any personally identifying information ("PII") or business proprietary information ("PROPIN") submitted in the body of the comment or as part of a related attachment they want posted. Commenters who submit through the federal e-rulemaking portal and do not want any of their PII posted on the internet should omit it from the body of their comment and any uploaded attachments that they want posted. If online commenters wish to submit PII with their comment, they should place it in a separate attachment and mark it at the top with the marking "CUI//PRVCY." Commenters who submit through mail should likewise omit their PII or PROPIN from the body of the comment and provide any such information on the cover sheet only, marking it at the top as "CUI//PRVCY" for PII, or as "CUI//PROPIN" for PROPIN. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at *https://www.regulations.gov*. Commenters must submit comments by using one of the methods described above, not by emailing the address set forth in the following paragraph.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Affairs, by email at ORA@atf.gov, by mail at Office of Regulatory Affairs; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; 99 New York Ave, NE; Washington, DC 20226, or by telephone at 202-648-7070 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

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

The GCA, at 18 U.S.C. 922(g)(4), prohibits any person "who has been adjudicated as a mental defective or who has been committed to a mental institution" from shipping, transporting, possessing, or receiving any firearm or ammunition. Additionally, section 922(d)(4) of the GCA prohibits any person from selling or otherwise disposing of a firearm or ammunition to a person who he knows or has reasonable cause to believe "has been adjudicated as a mental defective or has been committed to any mental institution at 16 years of age or older." Congress has not further defined the terms "adjudicated as a mental defective" or "committed to a mental institution" as used in these provisions.

In 1997, ATF issued a final rule titled "Definitions for the Categories of Persons

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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 sec. 38 of the Arms Export Control Act pertaining to permanently importing defense articles and services and the Contraband Cigarette Trafficking Act.

Prohibited From Receiving Firearms," to facilitate implementation of the National Instant Criminal Background Check System ("NICS"). 62 FR 34634–02 (Jun. 27, 1997). NICS provides a searchable database of federal, state, local, and tribal records on persons who are legally prohibited from possessing firearms, including persons prohibited under the GCA. The 1997 final rule therefore included definitions for several terms used in the GCA, including "adjudicated as a mental defective," "committed to a mental institution," and "mental institution."

Relevant here, the 1997 rule defined "adjudicated as a mental defective" as "[a] determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease" (1) "[i]s a danger to himself or to others; or" (2) "[l]acks the mental capacity to contract or manage his own affairs." The rule further specified that the term "shall include" (1) "[a] finding of insanity by a court in a criminal case" and (2) "persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice." As for the term "committed to a mental institution," the rule defined it to mean "[a] formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority," other than admission for purposes of "observation" or "a voluntary admission to a mental institution." These definitions from the final rule are currently codified at 27 CFR 478.11.

Two aspects of ATF's creation and interpretation of these definitions warrant further discussion. Prior to the 1997 final rule, ATF published a proposed rule to solicit comments on its proposed definitions for the various categories of persons who are prohibited from receiving or possessing firearms under the GCA. *See* Definitions for the Categories of Persons Prohibited From Receiving Firearms (95R-051P), 61 FR 47095–01 (Sep. 6, 1996). In discussing the definition of "adjudicated as a mental defective," the

proposed rule explained that ATF had looked at the Department of Veterans Affairs' ("VA") definition of "mental incompetent" when defining this statutory term. *See* 61 FR 47097. The VA definition of "mental incompetency," which was first published in 1975[3], provides that "[a] mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation." 38 CFR 3.353(a). The 1997 final rule stated that the VA in a comment on the proposed rule had "correctly interpreted [ATF's] proposed definition of 'adjudicated as a mental defective' to mean that any person who is found incompetent by the [VA] under 38 CFR 3.353 will be considered to have been adjudicated as a mental defective for purposes of the GCA." 62 FR 34637. Accordingly, in practice, such persons are covered by ATF's current definition of the term.

In defining "mental defective," the 1997 final rule also brought many mentally ill (as opposed to intellectually incompetent) individuals within the ambit of that term. For instance, in response to the proposed rule, the Department of Defense ("DoD") commented that the Uniform Code of Military Justice had recently been amended to include procedures for the commitment of military personnel found not guilty for reason of lack of mental responsibility. DoD accordingly recommended that "[t]he definition [of 'adjudicated as a mental defective'] shall also include those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U. S.C. 850a, 876b." As noted above, ATF added these individuals to the definition of "adjudicated as a mental defective" in the final rule. 62 FR 34637. ATF also expressly included in the 1997 rule certain other categories of mentally ill persons, such as those found insane in a criminal case and those determined, as a result of mental illness, to pose a danger to themselves or

[3] 40 FR 1241 (Jan. 7, 1975).

others. *Id.*[4]

II. Proposed Rule

A. Discussion

As a result of congressional restrictions placed on the VA's use of appropriated funds to report its incompetency determinations to NICS pursuant to 18 U.S.C. 922(g)(4), ATF conducted a review of its existing definitions of "adjudicated as a mental defective" and "committed to a mental institution" at 27 CFR 478.11. A review of both the VA competency process under 38 CFR 3.353 and the contemporaneous public meaning of the term "mental defective" indicates that the current regulatory definitions are not a correct interpretation of the statute in all respects.[5] *First*, ATF believes its current regulation defining "adjudicated as a mental defective" is overbroad because it encompasses individuals who do not suffer from the kinds of mental disabilities that fell within the term "mental defective" at the time the GCA was enacted. Specifically, the regulation — at least as the 1997 final rule has been interpreted — encompasses individuals who have narrow functional deficits, such as the inability only to manage financial benefits. Those

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[4] In 2014, the Department published an NPRM, "Amended Definition of 'Adjudicated as a Mental Defective' and 'Committed to a Mental Institution,'" 79 FR 774–01 (Jan 7, 2014), which it withdrew on September 11, 2025, without ever finalizing. *See* Withdrawal of Rulemaking Actions, 90 FR 43948, Table 1 (Sept. 11, 2025). Relevant here, the proposed rule would have amended the regulatory definition of "adjudicated as a mental defective" to clarify that the term includes (1) persons who are found incompetent to stand trial or not guilty by reason of mental disease or defect, lack of mental responsibility, or insanity, as well as (2) persons found guilty but mentally ill. But the proposed rule would not have otherwise altered the operative definition of "mental defective," so that the term would still have included anyone who lacks the "mental capacity to contract or manage [one's] own affairs." Finally, the proposed rule also contained clarifications to the term "committed to a mental institution." In support of these actions, the 2014 NPRM cited floor statements from certain members of Congress for the proposition that Congress "intended that the prohibition against the receipt and possession of firearms would apply broadly to 'mentally unstable' or 'irresponsible' persons." 79 FR 774–01, 775. But floor statements of individual members of Congress are a weak form of legislative history. These statements, moreover, expressed generic aims of implementing federal gun control; they did not purport to be an analysis of the term "mental defective." *See, e.g.*, 114 Cong. Rec. 21780 (1968) (statement of Rep. Sikes) ("I know there is a need for sane legislation which is intended to keep weapons out of the hands of criminals and mentally irresponsible persons."). ATF thus does not believe that the 2014 NPRM correctly interpreted the law when it tried to expand the categories of those deemed "mentally defective" to encompass anyone found "guilty but mentally ill." The 2014 NPRM employed a purposive approach to statutory construction that attempted, for policy reasons, to expand the scope of the statute's plain meaning. As explained further below, ATF proposes that mental illness qualifies under "mental defective" only when the mental illness is so severe that a person require guardianship.

[5] When interpreting a statute, courts examine the "ordinary, contemporary, common meaning" of the words when Congress enacted it. *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 433–434 (2019).

with isolated functional deficits are not the kind of individuals who were understood to be mentally defective as that term was used in the GCA. Nor are such individuals the kind of irresponsible or dangerous persons who Congress sought to prohibit from possessing firearms under sections 922(g)(4) and (d)(4).[6]

Second, ATF believes its current regulations also fail to properly distinguish between "adjudicated as a mental defective" and "committed to a mental institution." For example, in the 1997 final rule, ATF accepted the DoD's comment that the definition of "mental defective" should be adjusted to also include certain military personnel who were "found not guilty by reason of lack of mental responsibility," and therefore necessarily committed. 62 FR 34637.[7] But individuals who are involuntarily committed in that way should be primarily disqualified based on the "committed to a mental institution" prong of 18 U.S.C. 922 (g)(4) and (d)(4), not the "adjudicated as a mental defective" prong.[8] Similarly, ATF understands that individuals found by courts to be "a danger to [themselves] or to others," or found "not guilty by reason of insanity," will likely be committed to mental institutions. ATF's current regulatory classification of these individuals as "mental defective[s]" thus appears to improperly blend two different disqualifications under 18 U.S.C. 922(g)(4) and (d)(4).

This proposed rule would thus make two principal changes to ATF's current regulatory definitions. First, the proposed rule would clarify that the term "adjudicated as a mental defective" describes specifically those individuals who, as a result of a serious global intellectual deficit, cannot responsibly handle firearms. The rule would make clear

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[6] *See* 114 Cong. Rec. 21657, 21791, 21832, and 22270 (1968).

[7] The 1997 rule explained that DoD had noted that the Uniform Code of Military Justice had recently been amended to include procedures for commitment of military personnel found not guilty by reason of lack of mental responsibility. *See* 10 U.S.C. 876b(b). DoD apparently believed that these procedures fit better under the "adjudicated as a mental defective" prong than the "committed to a mental institution" prong, but did not explain why.

[8] In proposing to more clearly separate these two categories, ATF recognizes that there may still be some overlap between them. For example, in the military context, a servicemember who suffered a significant and permanent brain injury could become mentally defective within the meaning of the GCA. If the servicemember later committed a crime and was judged to be permanently irresponsible for his actions, he could also be involuntarily committed.

that individuals who present solely with isolated functional deficits, such as the inability to manage their government benefits, are not mentally defective within the meaning of the GCA. Second, the proposed rule would more explicitly distinguish the "adjudicated as a mental defective" and "committed to a mental institution" prongs of sections 922(g)(4) and (d)(4). ATF requests comments on this proposed further distinction.

1. Little Analysis Supports the Current Regulatory Definition of "Adjudicated as a Mental Defective"

The GCA prohibits the possession by, or disposition of a firearm to, a person who is "adjudicated as a mental defective *or* has been committed to a mental institution." 18 U.S.C. 922(g)(4) (emphasis added); *see also* 18 U.S.C. 922(d)(4). The use of the word "or" indicates a disjunctive: either adjudication as a mental defective or an involuntary commitment qualifies. However, both ATF regulations and some cases have failed to distinguish these separate prongs.

From 1968 until the passage of the Brady Handgun Violence Prevention Act of 1993 ("Brady Act"), Pub. L. 103–159 (107 Stat. 1536), ATF did not attempt to define what constituted adjudication as a mental defective or commitment to a mental institution. Only when the Brady Act required the Attorney General to establish NICS did ATF seek to clarify the categories of prohibited persons, so that it could facilitate the implementation of NICS. ATF did so by publishing the 1996 notice of proposed rulemaking, described above, proposing various definitions for the statutory categories of prohibited persons. *See* 61 FR 47095–01 (Sep. 6, 1996).

With respect to the definition of "adjudicated as a mental defective," the 1996 proposed rule contained little legal analysis. ATF simply recited that it had "examined the legislative history of the term, applicable case law, and the interpretation of the term by other federal agencies." 61 FR 47097. Citing various floor statements of individual members of Congress, ATF declared that "[t]he legislative history makes it clear that

Congress would broadly apply the prohibition against the ownership of firearms by 'mentally unstable' or 'irresponsible' persons." *Id.* And citing a lower court opinion, ATF further remarked that "the GCA is designed to prohibit the receipt and possession of firearms by individuals who are potentially dangerous, including those individuals who are mentally incompetent or afflicted with mental illness." *Id.*

This discussion was not a proper statutory analysis. As ATF itself acknowledged in the proposed rule, federal law does not prohibit the possession of firearms by individuals who are simply "afflicted with mental illness," *id.*, which could cover over 23% of the adult population.[9] Instead, federal law prohibits the possession and receipt of firearms only by persons "adjudicated" as a "mental defective" or involuntarily committed. 18 U.S.C. 922(g)(4); *accord* 18 U.S.C. 922(d)(4). Nevertheless, neither the 1996 notice of proposed rulemaking nor the 1997 final rule undertook any comprehensive analysis of the meaning of the key term "mental defective."

2. Problems with the Definition of "Adjudicated as a Mental Defective" as Applied to VA and Social Security Determinations of Incompetency

Recent controversies concerning veterans and social security recipients who have been disarmed because they were determined to require assistance managing their benefits demonstrate the overbreadth of the current regulatory definition of "adjudicated as a mental defective." The disarming of large numbers of veterans and social security recipients shows that the current regulation both encompasses too many people and fails to identify adequate procedural protections necessary for an adjudication.

VA regulations at 38 CFR 3.353 outline the procedures and criteria used by the VA to assess a veteran's mental competency or incompetency to manage their VA benefits. The VA regulation provides that a rating agency must not independently

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[9] National Institute of Mental Health, *Mental Illness Statistics*, https://www.nimh.nih.gov/health/statistics/mental-illness [https://perma.cc/2MCC-YL5L].

determine a person to be incompetent unless the medical evidence "is clear, convincing, and leaves no doubt as to the person's incompetency." Further, the regulation provides that "[d]eterminations relative to incompetency should be based upon all evidence of record and there should be a consistent relationship between the percentage of disability, facts relating to commitment or hospitalization and the holding of incompetency." *Id*. at § 3.353(c). However, the regulation does not expressly indicate that the VA as part of this competency evaluation assesses whether the person is so impaired that they pose a danger to themselves or others, or otherwise present a public safety threat. If the VA determines that a veteran is not competent, the VA appoints a fiduciary to assist the veteran with financial affairs. *Id.* at § 3.353(b)(2). The procedures set forth in the regulation also permit the veteran to be reexamined after an initial determination of incompetency, if evidence arises "indicating that the beneficiary may be capable of administering the funds payable without limitation." *Id.* at § 3.353(b)(3).

Beginning in 2024, Congress prohibited the VA from using appropriated funds to report to NICS a veteran deemed incompetent and assigned a fiduciary without a court ruling that the veteran is a danger to themselves or others. Congress has since continued that prohibition at least through September 30, 2026.[10] Because the prohibition may expire, however, ATF decided to reexamine whether persons who have been deemed incompetent only with respect to managing financial benefits should fall under the definition of "adjudicated as a mental defective." Although ATF turned to the VA's regulations when defining the statutory phrase in 1997, ATF now believes that the VA process for determining mental incompetency under section 3.353 is insufficient, standing alone, to support a determination that a person "has been adjudicated as a mental

[10] *See* Consolidated Appropriations Act of 2024, Pub. L. 118–42, sec. 413 (Mar. 9, 2024); Military Construction, Veterans Affairs, and Related Agencies Appropriations Bill, 2026, Pub. L. 119–37, sec. 413, 139 Stat. 496, 625–26 (Nov. 12, 2025); *see also* Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, 139 Stat. 495 (2025).

defective" within the meaning of the GCA. This is in part because the VA ultimately makes determinations only with respect to whether veterans are competent to manage the financial benefits they have earned, and its assessments are not intended to determine competency outside of the financial-literacy context.[11] In other words, the VA's competency procedure focuses specifically on the ability to manage VA benefits.[12] The VA's process does not necessarily determine or even in all cases review whether persons have sufficient intellectual capacity for other responsibilities that do not involve navigating complex regulatory schema, such as entering contracts, managing property, providing consent, or taking proper care of themselves.[13] Thus, the VA's competency determinations provide neither a conclusion about nor any definite insight into whether an individual should be considered a danger to themselves or others based on their intellectual capacity (or lack thereof), such that they should necessarily be restricted from possessing firearms under the GCA. As its recent appropriations restriction reflects, Congress is concerned about the extension of VA competency determinations into the GCA context and the impact those determinations have had on the ability of veterans to exercise their Second Amendment rights.

In addition to asking an inapposite question, VA incompetency determinations have also exhibited procedural limitations that cast doubt on whether they qualify as "adjudicat[ions]" under sections 922(g)(4) and (d)(4). A review by the VA indicates that, in the vast majority of incompetency determinations, there was no adjudicative process sufficient to support a deprivation of fundamental constitutional rights. In particular,

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[11] *See e.g., In re Estate of Dokken*, 604 N.W.2d 487, 493 (S.D. 2000) (holding that, although the testator was found incompetent for VA purposes pursuant to 38 CFR 3.353, he retained testamentary capacity under state law).

[12] *See, e.g.*, 38 CFR 3.353(b)(2) (listing the outsourcing of benefits management responsibilities away from the veteran and to a responsible third party as the sole effect of a determination of incompetency under this section); *id.* 3.353(b)(2) (explaining that a "prior determination of incompetency" should be reexamined if "the Veterans Service Center Manager develops evidence indicating that the beneficiary may be capable of administering the fun ds payable without limitation").

[13] Additionally, as further explained below, the VA competency determination generally does not result from an "adjudication."

although the VA has reported over 250,000 veterans to NICS since its inception, it appears that most were determined to be mentally incompetent by an in-house rating professional, not a judge or other independent arbiter.[14] Moreover, although a veteran can in theory request a hearing before a final incompetency determination is entered, such hearings are rarely held in practice.[15] Therefore, beneficiaries often lose their Second Amendment rights without an adversarial proceeding when they gain a fiduciary to manage their VA benefits.[16]

The lack of adversarial proceedings creates problems under both the GCA and the Constitution. Under the GCA, administrative determinations are insufficient to constitute an "adjudicat[ion]" within the meaning of 18 U.S.C. 922(d)(4) and (g)(4). Under the Constitution, there are serious questions whether the Second Amendment and the Due Process Clauses of the Fifth and Fourteenth Amendments permit individuals to be deprived indefinitely of the right to bear arms based on a finding of mental incapacity when no hearing to determine their incapacity took place.

Nonetheless, the impact of VA incompetency determinations on veterans' ability to own firearms has been significant. In 2025, the VA's Acting Principal Deputy Undersecretary for Benefits, Veterans Health Administration, testified to Congress that,

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[14] *See* Jordan B. Cohen, Cong. Research Serv., TE10109, *Correcting VA's Violations of Veterans' Due Process and Second Amendment Rights*, at 6 (Jan. 23, 2025) ("The VA employees tasked with adjudicating whether a veteran is financially incompetent are Veterans Service Representatives and Rating Veterans Services Representatives and their training does not require them to have legal or medical expertise."); *see also id.* at 7 ("As of the end of 2023, of the 270,851 active entries in NICS submitted by federal agencies for having been 'adjudicated as a mental defective' or committed to mental institutions, 264,893 (97.8%) were submitted by the VA, though all of these were not necessarily because a veteran was determined mentally incompetent and needed a fiduciary to collect benefit payments.").

[15] "In FY2022, VA data indicates there were 135 hearings on incompetency determinations, 24 of which resulted in a finding of competency." Jordan B. Cohen, Cong. Research Serv., TE10109, *Correcting VA's Violations of Veterans' Due Process and Second Amendment Rights*, at 8 (2025). By contrast, the VA before FY2024 *reported* upwards of 10,000 individuals to NICS annually. *See* Legislative Hearing on H.R. 472; H.R. 1041; H.R. 740; and H.R. 1391, Before the H. Comm. On Veterans' Affairs, 119th Cong., at 28–29 (Feb. 25, 2025) (statement of Beth Murphy, Acting Principal Deputy Undersecretary for Benefits, Veterans Health Administration, U.S. Department of Veterans Affairs).

[16] *See generally* Jordan B. Cohen and Madeline D. Moreno, Cong. Research Serv., R47626, *Gun Control, Veterans' Benefits, and Mental Incompetency Determinations* (2023); *see also generally* Lynn Sears, Cong. Research Serv., IF13019, *The VA Fiduciary Program, An Overview* (2025); Jordan B. Cohen, Cong. Research Serv., TE10109, *Correcting VA's Violations of Veterans' Due Process and Second Amendment Rights* (2025).

in the year prior to the appropriations restriction, the VA reported approximately 13,000 individuals to NICS.[17] But she testified that in 2024, due to the appropriations requirement that imposed a more stringent standard for the VA's NICS reporting, the VA reported only three persons to NICS — persons who were not simply deemed incompetent but who had been found under judicial orders to pose a danger to themselves or others.[18] This change indicates that too many veterans have been disarmed over the years under ATF's overbroad definition of "adjudicated as a mental defective," often without formal adjudicatory proceedings.[19]

Similar problems also existed with Social Security regulations. The Social Security regulations provide that benefits for purposes of federal old age, survivors, and disability insurance (20 CFR part 404) and supplemental security income for aged, blind, and disabled (20 CFR part 416) may be made to a representative payee. Payments may be made to a representative payee, in relevant part, when the beneficiary is determined to be legally incompetent or mentally incapable of managing benefit payments, or physically incapable of managing or directing the management of his or her benefit payments. 20 CFR 404.210, 416.610. In appointing a representative payee, the Social Security Administration ("SSA") considers court determinations that the individual is found legally incompetent; medical evidence to determine whether the beneficiary is capable of managing or directing the management of payments through, for example, physician or

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[17] *See* Legislative Hearing on H.R. 472; H.R. 1041; H.R. 740; and H.R. 1391, Before the H. Comm. On Veterans' Affairs, 119th Cong., at 28–29 (Feb. 25, 2025) (statement of Beth Murphy, Acting Principal Deputy Undersecretary for Benefits, Veterans Health Administration, U.S. Department of Veterans Affairs). However, this 13,000 figure is a snapshot in time and is fluid. The VA takes steps to monitor and update the files it submits to NICS. If a file no longer meets the requirements to be considered "adjudicated as a mental defective," then it is removed from NICS.

[18] *Id.*

[19] ATF notes, following its own review, VA independently concluded that fiduciary incompetency determinations under 38 U.S.C. 5502 do not constitute lawful adjudications within the meaning of 18 U.S.C. 922(g)(4), as such determinations lack the judicial finding of dangerousness or mental defectiveness that the statute requires. Consistent with this conclusion, VA directed the removal from the NICS Indices of records submitted solely on the basis of fiduciary appointments, while retaining in NICS any records that had an independent qualifying basis. VA's prior action thus reflects the same legal distinction ATF's proposed rule would now formalize, and supports the accuracy of ATF's proposed revised definition.

medical professional examinations; and statements from relatives, friends, and other people in a position to know and observe the beneficiary, which would include information helpful to deciding whether the beneficiary is able to manage or direct the management of benefit payments. 20 CFR 404.2015, 416.615.

The beneficiary may submit additional evidence of the decision, seek reconsideration of the decision, and request a hearing before an Administrative Law Judge ("ALJ"). *See* 20 CFR part 404, subpart J; part 416, subpart N. If dissatisfied with the ALJ decisions, the beneficiary can request a review by the Appeals Counsel. Finally, if dissatisfied with the Appeals Counsel decision, the beneficiary may file an action for review in federal district court.

In 2009, the SSA General Counsel advised ATF that the SSA does not adjudicate individuals as "mental defectives," or commit individuals to mental institutions, within the meaning of the GCA. Therefore, the SSA did not need to establish a federal relief of disability program under the NICS Improvement Amendment Act of 2007 ("NIAA"), which mandated that federal agencies provide relevant records to the Attorney General for inclusion in NICS. In 2010, ATF stated in a memorandum to the Department's Office of Legal Policy that the SSA procedures fell under the "adjudicated mental defective" provision of 18 U.S.C. 922(g)(4) and 27 CFR 478.11 because the SSA makes formal decisions with due process that, due to a mental condition, a person is unable to manage his benefit payments and appoints a representative payee. On December 19, 2016, the SSA issued a final rule to implement the provisions of the NIAA. 81 FR 91702 (2016). The final rule added a new part to SSA regulations that established a program for identifying, on a prospective basis, records for inclusion in NICS, procedures to provide notice to the individuals affected, and a relief program. Specifically, the SSA provision, 20 CFR 421.110, provided that SSA will report to NICS those individuals, in relevant part, that the SSA has determined "based on a finding that the individual's impairment(s)

meets or medically equals the requirements of one of the Mental Disorders Listing of Impairments (section 12.00 of appendix 1 to subpart P of part 404 of this chapter) under the rules in part 404, subpart P, of this chapter, or under the rules in part 416, subpart I, of this chapter." 81 FR 91714. The SSA's mental disorders listing codified as part of the SSA's regulations includes various disorders including physical disorders, mental disorders, and neurological disorders. However, Congress disapproved of the SSA's final rule by joint resolution pursuant to the Congressional Review Act, which resulted in the final rule having no force and effect. Pub. L. 115–8 (Feb. 28, 2017).

The SSA determination suffers from the same flaw in the VA adjudication. The SSA process does not necessarily determine whether persons have sufficient intellectual capacity for other responsibilities beyond whether the beneficiary can manage their own affairs. Specifically, the determinations under 20 CFR 404.210 and 416.610 are specifically whether the beneficiary can manage or direct the management of payments. These competency determinations provide no insight into whether persons should be considered a danger to themselves or others based on their intellectual capacity. Congress evidenced their concern with the reporting of these adjudications to NICS as indicated by the Congressional Review Act disapproval of the SSA final rule that requires reporting of these records. As of December 2025, there is only one active entry in the NICS indices for an individual that is adjudicated mental defective from the SSA.

3. Judicial Interpretations of "Adjudicated as a Mental Defective" and "Committed to a Mental Institution"

The need to reevaluate the regulatory definitions for the categories of persons prohibited from possessing or receiving firearms under sections 922(g)(4) and (d)(4) is made more acute by the fact that those definitions largely are not based upon relevant, reasoned judicial decisions. In formulating the definitions for "adjudicated as a mental defective" and "committed to a mental institution," ATF relied on four judicial decisions

— two from the Supreme Court and two from the courts of appeals. But at least as applied to the term "adjudicated as a mental defective," the decisions that ATF cited are either off-topic or contain little legal analysis. The first Supreme Court decision, *Huddleston v. United States*, 415 U.S. 814 (1974), is about whether a pawn redemption is an "acquisition" within the meaning of section 922(a)(6) of the GCA. *Id.* at 815. Although *Huddleston* recited some broadly-applicable GCA legislative history (e.g., a congressional floor statement that "[n]o one can dispute the need to prevent . . . persons with a history of mental disturbances . . . from buying, owning, or possessing firearms"), and asserted that there "can be no doubt of Congress's intention to deprive the juvenile, the mentally incompetent, the criminal, and the fugitive of the use of firearms," the decision did not reach any holding related to sections 922(d)(4) or (g)(4) in particular. *Id.* at 827–28. The Supreme Court's decision in *Barrett v. United States*, 423 U.S. 212 (1976), is similarly off topic; that case was about the commerce nexus required to convict someone of illegal possession of a firearm. *Id.* at 213.

Unlike the two Supreme Court cases, the two courts of appeals' opinions cited in the 1996 proposed rule do specifically address the relevant provisions of the GCA. Both decisions, however, are of little assistance. In *United States v. Buffaloe*, 449 F.2d 779 (4th Cir. 1971), the Fourth Circuit did no statutory analysis when it affirmed the defendant's section 922 false statement conviction for "purchas[ing] pistols stating that he had never been adjudicated a mental defective or committed to a mental institution." *Id.* at 780. In that case, the Government proved the defendant had previously been acquitted by reason of insanity and then committed to a mental institution as a "criminally insane person." *Id.* In one conclusory sentence, the Fourth Circuit held that "[w]e agree with the district judge that [the defendant] was adjudicated and committed within the meaning of 18 U.S.C. § 922(d)(4)." 449 F.2d at 779. The court did not explain what "mental defective" meant or why the defendant fell within the category. The court effectively treated

"adjudicated as a mental defective" and "committed to a mental institution" as a unitary phrase, not warranting separate analyses.

The second case, *United States v. Waters*, 23 F.3d 29 (2d Cir. 1994), involved a "commitment," not an adjudication of mental defectiveness. The defendant in *Waters* had a prior admission to a psychiatric hospital, and the question presented was whether that admission constituted a "commitment" within the meaning of section 922(g)(4). *Id.* at 31. The court ultimately concluded that it did, but undertook no analysis of the term "mental defective," which was not at issue. *Id.* at 36.

Unlike the four cases ATF cited in its earlier 1996 NPRM, the Eighth Circuit's decision in *United States v. Hansel*, 474 F.2d 1120 (8th Cir. 1973), thoroughly opined on the definition of "adjudicated a mental defective" as used in the GCA. In *Hansel*, an individual determined by the Board of Mental Health of Lancaster County, Nebraska to be "mentally ill" was convicted for falsely certifying in the course of purchasing a firearm that he had not been "adjudicated a mental defective."[20] *Id.* at 1121–22. Because the term "mental defective" is not defined in the GCA, and the ATF regulations had not yet been issued, it fell to the court to consider as a matter of first impression the meaning of the term and decide whether it had been appropriately applied. *Id.* at 1123.

The *Hansel* court first considered trial testimony on the subject by the doctor who had examined Hansel while he was temporarily in a state mental hospital for observation. The doctor was asked if he was familiar with the term and its meaning; when he responded that he was, he was asked how he understood the term. The doctor stated that it would be "an impairment of intellectual abilities so it would be synonymous with mental retardation." *Id.* at 1123. The doctor also stated that Hansel, who had a mental

[20] The Board of Mental Health had ordered the defendant hospitalized, and so the government initially argued that the defendant had also been "committed to a[] mental institution" within the meaning of the GCA. *Hansel*, 474 F.2d at 1121–22. But "[t]he government conceded on appeal that the defendant was not committed because there [had been] no compliance with [Nebraska state law governing commitment procedures]." *Id.* at 1122–23.

illness, would not qualify as mentally defective or deficient. *Id.* at 1123–24. The court also noted, citing several cases and other legal sources, that the law has usually distinguished between persons who are mentally defective or deficient — which "normally designates an individual of marked subnormal intelligence" — and those who are mentally diseased or ill. *Id*. at 1124 (citing *People v. Thayer*, 121 Misc. 745, 202 N.Y.S. 633 (Ulster County Ct. 1923); Interstate Compact on Mental Health, 5A Ark. Stat. Ann.,§ 59-801; Herzog, Medical Jurisprudence, §§ 561–585 (1931); 1 Wharton and Stille, Medical Jurisprudence, §§ 1073–1093 (5th ed. 1905); *People v. Hoffmann*, 255 App. Div. 404, 8 N.Y.S.2d 83, 85 (App. Div. 1938)).

The *Hansel* court also reviewed several standard and psychiatric dictionaries to determine the meaning of "mental defectiveness." The court noted that Webster's Dictionary (1935) defined the term as indicating "marked subnormal intelligence" or "lack of intelligence," and further described subnormal intelligence levels as descending on a scale of "moronity, imbecility, and idiocy." *Id*. The court also quoted a psychiatric dictionary from 1960, more closely aligned in time with the GCA and the *Hansel* decision, which defined the term as meaning "subnormal intellectually, feebleminded." *Id*.

The court also relied heavily on *Encyclopedia Britannica* (1972) as well as findings of the Royal Commission on Capital Punishment (1953). *Encyclopedia Britannica*, the *Hansel* court said, stated that "mental defectiveness, mental deficiency, and feeblemindedness are synonyms which denote limitations of development of the personality, usually including intellectual retardation." *Id*. Likewise, the court relied on the Royal Commission's statement that "'Mental deficiency' is generally understood as meaning intellectual defect, or defect of understanding, existing from birth or from an early age. In England, 'mental defectiveness' is defined by statute as 'a condition of arrested or incomplete development of mind existing before the age of eighteen years,

whether arising from inherent causes or induced by disease or injury.'" *Id*.

Following this historical review, the Eighth Circuit in *Hansel* determined that the term "mental defective" as used by the GCA in 1968 denoted a "person who has never possessed a normal degree of intellectual capacity," as opposed to those who are mentally ill, diseased, or insane, and thus potentially had "faculties which were originally normal" before being "impaired by mental disease." *Id.* The Eighth Circuit added that, "[i]f it is the desire of Congress to prohibit persons who have any history of mental illness from possessing guns, it can pass legislation to that effect, but we cannot read into this criminal statute an intent to do so." *Id.* at 1125. Accordingly, the court vacated the defendant's GCA convictions on the basis that he had not been "adjudicated as a mental defective" (or "committed to a mental institution") within the meaning of the statute. *Id.*

4. Meaning of the Term of "Mental Defective"

The *Hansel* decision highlighted an important nuance in Congress's use of the term "mental defective." Congress could have used a term that broadly included any mental illness. Or, it could have explicitly mentioned both mental illness and mental defectiveness, which would have been viable based on the terminology and psychological understanding at the time. Notably, however, Congress did neither.

Hansel was decided not long after the GCA was adopted, and its reasoning remains relevant. When interpreting a statute, ATF must consider the words Congress used, or chose not to use, and must give those words their true meaning.[21] Therefore, ATF has reviewed practical resources dated close in time to when the GCA was enacted to define the term "mental defective." Although the first edition of the Diagnostic and Statistical Manual: Mental Disorders ("DSM-I") (published in 1952) did not use the term "mental defective," the DSM-I classified mental disorders associated with impairment of

[21] *See Duncan v. Walker*, 533 U.S. 167, 174 (2001); *see also* Cong. Research Serv., R45153, *Statutory Interpretation: Theories, Tools, and Trends*, at 20–21, 51 (Mar. 10, 2023).

brain-tissue function as either acute brain disorders, chronic brain disorders, or mental deficiency (one of the synonyms for mental defective listed by *Encyclopedia Britannica*). "Acute" indicated situations in which the patient would generally recover from the impairment, whereas "chronic" indicated the impairment was relatively permanent. DSM-I at 15, 18. And similar to the *Hansel* court, the DSM-I identified "mental deficiency" as describing those cases "primarily" involving "a defect of intelligence existing since birth, without demonstrated organic brain disease or prenatal cause." DSM-I, at 23.

DSM-I further categorized mental deficiency as either mild, moderate, or severe. "Mild" referred to functional or vocational impairment with an expected IQ range of approximately 70 to 85. "Moderate" referred to functional impairment requiring special training and guidance with an expected IQ range between 50 and 70. And "severe" referred to functional impairment requiring custodial care with an expected IQ less than 50. Moderate and severe mental deficiencies generally corresponded with the terms "moron" and "imbecile," respectively, as used in the International Classification of Diseases, Revision 6 (1948) ("ICD-6").

DSM-I was updated in a second edition in 1968 ("DSM-II") — the same year Congress passed the GCA. DSM-II reclassified mental deficiencies, as well as chronic brain disorders presenting with mental deficiencies, under the general term "mental retardation." Based on these definitions, which all originated close in time to when the GCA was drafted and passed, ATF believes that Congress — in choosing to use the phrase "adjudicated as a mental defective" — was primarily intending to prohibit firearm possession by those who have sufficiently subnormal intellectual capacity that they cannot act responsibly with potentially dangerous instrumentalities.

Surveys of legal materials confirm that the contemporaneous legal understanding of the term "mental defective" applied to those with significant and longstanding

intellectual disabilities. In 1954, Kentucky's involuntary commitment statute defined "mentally defective person" to mean "a person with a defect in mental development at birth, or at an early age, and which is of such a degree that he is incapable of caring for himself or managing his affairs and requires supervision, care, training, control or custody for his own welfare or for the welfare of others."[22] The term included "idiot," "feeble-minded person" and "feeble-minded and epileptic," but it did not include "'lunatic,' 'insane' or 'insane person,' and epileptic," who fell within the category of those who were "mentally ill."[23]

In 1955, New Mexico's "Act Relating to Mental Defectives" defined "mental defective" as "any person not classified as insane but mentally underdeveloped or faultily developed, or mentally backward or retarded, to the degree that he is incapable of managing himself and his affairs, and requires supervision, care and control for his own welfare, or for the welfare of others, or for the welfare of the community."[24] Similarly, in 1957, North Carolina in its commitment statute defined "mental defective" as:

> a person who is not mentally ill but whose mental development is so retarded that he has not acquired enough self-control, judgment, and discretion to manage himself and his affairs, and for whose own welfare or that of others, supervision, guidance, care, or control is necessary or advisable. The term shall be construed to include 'feeble-minded', 'idiot', and 'imbecile'.[25]

Sources from other common-law jurisdictions accord. In 1911, New Zealand passed "An Act to Consolidate and Amend the Law Relating to the Care and Control of Mentally Defective Persons."[26] That act defined "mentally defective person" as:

> a person who, owning to his mental condition, requires oversight, care, or control for his own good or in the public interest, and who according to

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[22] S. Journal, Ky. Gen. Assemb., Reg. Sess. 1954, at 43, https://heinonline.org/HOL/P?h=hein.ssl/ssky0089&i=55.
[23] *Id.*
[24] S. Journal, 22d Leg., Reg. Sess. (N.M. 1955), at 456–57, https://heinonline.org/HOL/P?h=hein.ssl/ssnm0074&i=465.
[25] Journal of the Senate, N.C. Gen. Assemb., Reg. Sess. 1957, at 1168 https://heinonline.org/HOL/P?h=hein.ssl/ssnc0053&i=1218.
[26] Mental Defectives Act 1911, 2 Geo. V No. 6 (N.Z.), https://www.nzlii.org/nz/legis/hist_act/mda19112gv1911n6240.pdf.

the nature of his mental defect and to the degree of oversight, care, or control deemed to be necessary is included in one of the following classes: —

Class I: — "Persons of unsound mind" — that is, persons who, owing to disorder of the mind, are incapable of managing themselves or their affairs:

Class II: — "Persons mentally infirm" — that is, persons who, through mental infirmity arising from age or the decay of their faculties, are incapable of managing themselves or their affairs:

Class III — "Idiots" — that is, persons so deficient in mind from birth or from an early age that they are unable to guard themselves against common physical dangers and therefore require the oversight, care, or control required to be exercised in the case of young children:

Class IV — "Imbeciles" — that is, persons who though capable of guarding themselves against common physical dangers are incapable, or if of school age will presumably when older be incapable, of earning their own living by reason of mental deficiency existing from birth or from an early age:

Class V — "Feeble-minded" — that is, persons who may be capable of earning a living under favourable circumstances, but are incapable from mental deficiency existing from birth or from an early age of competing on equal terms with their normal fellows, or of managing themselves and their affairs with ordinary prudence:

Class VI — "Epileptics" — that is, persons suffering from epilepsy.[27]

In 1913, the United Kingdom defined mental defective to comprise the following four categories of persons:

> (a) Idiots; that is to say, persons so deeply defective in mind from birth or from an early age as to be unable to guard themselves against common physical dangers;
>
> (b) Imbeciles; that is to say, persons in whose case there exists from birth or from early age mental defectiveness not amounting to idiocy, yet so pronounced that they are incapable of managing themselves or their affairs, or, in the case of children, of being taught to do so;
>
> (c) Feeble-minded persons; that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to imbecility, yet so pronounced that they require care, supervision, and control for their own protection or for the protection of others, or, in the case of children, that by reason of such defectiveness appear to be permanently incapable of receiving proper benefit from the instruction in ordinary schools;
>
> (d) Moral imbeciles; that is to say, persons who from an early age display

[27] *Id.* at 14.

> some permanent mental defect coupled with strong vicious or criminal propensities on which punishment has had little or no deterrent effect.[28]

In 1959, Canada passed "The Mental Defectives Act." That act defined "mentally defective person" as "a person in whom there is a condition of arrested or incomplete development of mind existing before the age of eighteen years, whether arising from inherent causes or induced by disease or injury."[29]

As these sources make clear, the term "mental defective," as it was understood in the early- to mid- twentieth century, had a core and a periphery. The core of the term was a person who had significant intellectual disabilities, generally beginning from birth or an early age. The term could also apply to those who acquired such infirmities later due to age or disease, such as those who acquired intellectual deficits because of dementia, stroke, or other permanent physical causes. At the periphery, the term sometimes applied to those with mental illnesses, where those illnesses were of a permanent or chronic nature and were severe enough that the person required guardianship to manage his own affairs.

It is also clear from these sources who was usually *not* considered a "mental defective." Mental defectiveness was generally separate from mental illness. A finding of insanity or incompetence to stand trial was not inherently sufficient to trigger a finding of mental defectiveness, particularly when that insanity or incompetence was of a transient nature and the person could otherwise manage his own affairs.

Part of the problem with ATF's present regulatory definition of "mental defective" may be that ATF's current interpretation of the definition has strayed from the definition's original intent. As mentioned, the current regulation defines "adjudicated as a mental defective" to include persons for whom there is a judicial or quasi-judicial finding

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[28] Mental Deficiency Act 1913, 3 & 4 Geo. 5 c. 28 sec. I(1) (U.K.), https://www.education-uk.org/documents/acts/1913-mental-deficiency-act.html.
[29] The Mental Defectives Act, R.S.A. 1955, c. 199, sec. 1 (Alta.), https://www.canlii.org/en/ab/laws/hstat/rsa-1955-c-199/latest/rsa-1955-c-199.html.

that the person "[l]acks the capacity to contract or manage his own affairs." 27 CFR 478.11. The sources just discussed indicate that, properly construed, this provision should have included only those individuals who have broad functional deficits across multiple domains such that they are substantially incapable of contracting, managing money, and otherwise caring for their own welfare. Contrary to ATF's statement in the 1997 final rule, the provision should not apply to those who simply are incapable of managing certain government benefits. In light of this confusion, ATF believes it is necessary to revise and supplement the regulatory definition of "adjudicated as a mental defective." In particular, ATF believes it is necessary to delete from the definition the "[l]acks the capacity to contract or manage his own affairs" provision, because that provision can too easily be construed as including persons with isolated limitations in performing specific tasks, as opposed to only persons with global functional deficits.

5. Properly Defining and Distinguishing "Adjudicated as a Mental Defective" and "Committed to a Mental Institution"

As explained in the background section, the 1997 final rule also classified several other adjudications, beyond those involving capacity to contract or manage one's own affairs, as adjudications of mental defectiveness. Those include a finding of insanity in a criminal case; a finding that a person is a danger to himself or others; and a finding that a person is incompetent to stand trial or not guilty by lack of mental responsibility under the Uniform Code of Military Justice ("UCMJ"). 62 FR 34637.

The 1996 proposed rule contained no reasoning or textual analysis in support of the conclusion that the term "mental defective" is properly understood to include all of these concepts. In the proposed rule, ATF stated only that it had reviewed "the legislative history of the term, applicable case law, and the interpretation of the term by other federal agencies." 61 FR 47097. Based on this review, ATF believed that a broad definition of "mental defective" was warranted because "Congress would broadly apply the

prohibition against the ownership of firearms by 'mentally unstable' or 'irresponsible' persons." *Id*. Additionally, ATF added the UCMJ provision at the request of the DoD, similar to the way it accepted in its final rule the VA's view that a VA incompetency determination would meet ATF's regulatory definition.

On further reflection, ATF is unsure that the 1997 final rule correctly demarcated the difference between "adjudicated as a mental defective" and "committed to a mental institution." Although ATF recognizes that usages of the term "mental defective" were not perfectly consistent at the time of the GCA's enactment, its predominant meaning referred to individuals who had significant and longstanding intellectual disabilities rather than mental illnesses. *See Hansel*, 474 F.2d at 1124 ("In law, a distinction has usually been made between those persons who are mentally defective or deficient on the one hand, and those who are mentally diseased or ill on the other."); *see also* Black's Law Dictionary 1137 (4th ed. 1951) ("Mental Defect. As applied to the qualification of a juror, this term must be understood to embrace either such gross ignorance or imbecility as practically disqualifies any person from performing the duties of a juror."). As explained above, the statutory definitions in both U.S. and other common-law jurisdictions also distinguish "mental defective" from "mental illness" or "insanity." It appears that insane persons fall outside the traditional definition of "mental defective," except in certain severe cases where a person has a permanent or chronic condition that requires guardianship.

One other textual clue suggests that ATF's current definition of "adjudicated as a mental defective" does not accord with the GCA: under ATF's current definition, the "committed to a mental institution" prong of the statute would be largely (if not entirely) superfluous. Involuntary commitments generally require a "lawful" "determination" that a person is insane or poses a danger to himself or others, and ATF's definition of "mental defective" already independently encompasses such findings.

ATF is therefore requesting comments on whether parts of the definition of "adjudicated as a mental defective" should be moved to the definition of "committed to a mental institution." As explained further below, ATF is proposing that, for persons who cannot responsibly handle firearms due to mental illness, the triggering event under the GCA should be an involuntary commitment to a mental institution. That commitment may be triggered for the reasons previously identified in the "mental defective" prong: a finding that a person is a danger to himself or others, an acquittal by reason of insanity, or a finding of incompetence to stand trial or acquittal by reason of lack of mental responsibility under the UCMJ.

ATF is soliciting comments on both legal and policy questions. Legally, ATF requests comments about the original public meaning of "mental defective" in 1968. With respect to policy, ATF is particularly interested in whether this reorganization of the rule would have any adverse impact on public safety. Specifically, ATF is interested in whether there are individuals who are found not guilty by reason of insanity or found in a proceeding to be a danger to themselves or others but are not committed to a mental institution as proposed by the definition. ATF also seeks comment on whether the reorganization of the rule along the lines proposed above would permit any mentally unstable persons to acquire firearms who could not do so today.

6. The Second Amendment and 18 U.S.C. § 922(g)(4)

The Second Amendment presumptively guarantees law-abiding U.S. citizens the right to bear arms. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 32–33 (2022). However, the Supreme Court has concluded that this Nation's historical tradition of firearms regulation allows the government to disarm individuals who present a credible threat to the physical safety of others.[30] Although the Supreme Court has yet to

[30] *United States v. Rahimi*, 602 U.S. 680, 700 (2024) (holding that an individual who poses a credible threat to the physical safety of others may be temporarily disarmed consistent with the Second Amendment).

squarely confront the issue, there are strong arguments that our Nation's historical tradition likewise permits disarming those who have such profound cognitive disabilities that they cannot live independently, or require the appointment of a guardian, because such persons cannot safely handle dangerous instruments like firearms. On the other hand, though, restricting individuals' Second Amendment rights solely based on their assessed inability to manage their government benefits or other financial assets incorrectly assumes that they lack mental capacity to responsibly possess firearms — and often does so in the absence of any formal adjudication before a judicial or other competent authority.

B. Proposed changes

In proposing the changes indicated below, ATF is guided by the original public meaning of the statute. *See Food Mktg. Inst.*, 588 U.S. at 433–34. The need to examine original public meaning is more acute because ATF's regulations no longer receive deference under *Chevron U.S.A. Inc. v., Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984). Previously, under *Chevron*, courts would defer to agency interpretations of statutes that were permissible but not necessarily the best. But in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Supreme Court overturned *Chevron*. The court explained that "[i]n the business of statutory interpretation, if it is not the best, it is not permissible." *Id.* at 400.

Given *Loper Bright*, ATF has conducted an exhaustive review of the original public meaning of "adjudicated as a mental defective" and "committed to any mental institution" in 18 U.S.C. 922(d)(4) and (g)(4). ATF has also rejected previous interpretations of these provisions that have elevated legislative history and legislative purpose over the plain meaning of the statute.

1. "Adjudicated as a mental defective"

This rule proposes to amend the definition of "adjudicated as a mental defective"

in 27 CFR 478.11 by revising the definition to have two main components — one substantive and one procedural — and by defining additional terms within the definition for more clarity. Additionally, ATF proposes moving parts of the current definition of "adjudicated as a mental defective" into the revised "committed to a mental institution" definition. Overall, these changes would ensure more faithful adherence to the statutory language of 18 U.S.C. 922(g)(4) and (d)(4) and the congressional intent underlying those prohibitions.

ATF proposes to restructure the definition of "adjudicated as a mental defective," which currently has two paragraphs. Paragraph (a) defines a person as "adjudicated as a mental defective" when there is "[a] determination by a court, board, commission, or other lawful authority that [the] person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease" "[i]s a danger to himself or others" or "[l]acks the mental capacity to contract or manage his own affairs." Paragraph (b) provides that the term "shall include" both "[a] finding of insanity by a court in a criminal case" and "[t]hose persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to . . . the Uniform Code of Military Justice."

In its restructuring, ATF proposes (1) breaking paragraph (a) into four paragraphs, each identifying a category of persons who will be considered to have been "adjudicated as a mental defective" under the revised definition; (2) replacing the existing paragraph (b) with a definition of "intellectual disability"; (3) moving the existing contents of paragraph (b) into the revised definition of "committed to a mental institution"; and (4) adding a new paragraph (c) to define the procedural requirements for a qualifying "adjudication" under the statute.

Proposed categories of persons "adjudicated as a mental defective"

The proposal would alter the definition of "adjudicated as a mental defective" to refer primarily to those conditions involving intellectual disabilities. Substantively,

paragraph (a) of the current regulations would be revised under the proposed rule to provide that a person is "adjudicated as a mental defective" for purposes of the GCA if a court, board, commission, or other lawful authority has (1) appointed the person a guardian because of an intellectual disability or mental illness; (2) found the person to have a permanent physical condition, such as dementia, provided the person has reached the functional capability equivalent to that of a person with an intellectual disability and has had a guardian appointed; or (3) found the person to be incompetent to stand trial based on a mental disease or defect where there is no reasonable possibility of restoring competence.

The purpose of the proposed definition would be to identify those who suffer from sufficiently subnormal intellectual capacity that, as a categorical rule, they cannot be entrusted to responsibly handle firearms — even if they do not have a documented propensity for violence. Instead, these individuals have such profound and permanent disabilities that they lack the cognitive ability to make mature judgments. Congress determined that those who are cognitively incapable of making responsible judgments across many functional areas cannot be trusted to independently possess firearms.

The proposed categories in paragraph (a) would primarily tie a person's status as "adjudicated as a mental defective" to a finding by a court, board, commission, or other lawful authority that the person has an "intellectual disability." Accordingly, as discussed below, ATF also proposes to define "intellectual disability," as well as to set forth what constitutes an "adjudication" for purposes of section 922(g)(4). For physical conditions only, the rule proposes to make clear that, under the proposed definition, the condition affecting a person's intellectual capabilities must be permanent.

Although the proposed rule would generally separate its treatment of intellectual disability (governed primarily by "adjudicated as a mental defective") from its treatment of mental illness (governed primarily by "committed to a mental institution"), ATF

acknowledges that the line separating these two concepts is blurry, not bright. One difficult case involves a person for whom a guardian has been appointed due to extensive mental illness, but who has not been involuntarily committed. ATF proposes that when a mental illness becomes severe enough to warrant a judicial appointment of a guardian, that would qualify a person as "adjudicated as a mental defective." This case shares an essential trait with the appointment of a guardian for intellectual disability: a determination by a court that a person is cognitively unable to make responsible decisions as an independent adult. Such persons are the kind of irresponsible persons who Congress decided should not be entrusted with firearms. And as explained above, such persons were recognized at the periphery of various statutory definitions of "mental defective" around the time the GCA was enacted.

The proposed rule would also make clear that neither temporary guardianship for a physical disability nor the appointment of a limited fiduciary counts as an adjudication of mental defectiveness. The concept of mental defectiveness describes a person who broadly lacks the cognitive capacity to act as a responsible adult. Mental defectiveness does not encompass an otherwise responsible person who is temporarily cognitively incapacitated due to a transient physical condition or who requires assistance in a single functional area (e.g., managing money).

Through paragraph (a)(3), the rule would also include in the category of "adjudicated as a mental defective" those who have been found by a court (or by the convening authority in a court-martial) to be incompetent to stand trial based on a mental disease or defect where there is no reasonable possibility of restoring competence. Some defendants are never found legally insane because medical therapy proves ineffective and so they never attain competency to stand trial. Because such individuals have profound and longstanding cognitive disabilities, though, ATF believes that such individuals fall within the definition of "mental defective" irrespective of whether they have been

committed to a mental institution or found insane by a court in a criminal case. Nevertheless, for this category, ATF recognizes that most of these individuals will also likely be involuntarily committed for treatment.

Persons will also be found incompetent to stand trial if they lack "sufficient present ability to consult with [their] lawyer with a reasonable degree of rational understanding" or if they lack "a rational as well as factual understanding of the proceedings against [them]." *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam). A person could be deemed temporarily incompetent for a variety of transient physical or mental conditions. ATF does not believe that the term "mental defective" was meant to reach those with temporary physical disabilities or those who had a temporary mental condition during which they momentarily did not understand the proceedings against them or could not contribute to their own defense. Some individuals, however, suffer from severe mental illness and are not responsive to medical therapy. ATF believes that such individuals — who are often indefinitely confined, but for whom a formal finding of insanity was never made because they were never competent to stand trial — fall within the scope of "mental defective," irrespective of whether they are involuntarily committed, because they broadly lack the cognitive ability to live independently and to engage in responsible adult behavior.

ATF also proposes moving three components of the current definition of "adjudicated as a mental defective" to the definition of "committed to a mental institution." These are: (1) individuals found to be a danger to themselves or others; (2) individuals found insane in a criminal case; and (3) individuals found incompetent to stand trial or found not guilty by reason of lack of mental responsibility under the UCMJ. To be clear, ATF is not proposing to eliminate these as a basis for a firearms prohibition under 18 U.S.C. 922(g)(4) or 922(d)(4). ATF is merely requesting comment on whether individuals in these categories are properly understood to be prohibited on the basis of an

involuntary commitment rather than an adjudication of mental defectiveness.

Proposed definition of "intellectual disability" for purposes of "adjudicated as a mental defective"

The first category in the proposed new definition of "adjudicated as a mental defective," at paragraph (a)(1), involves persons who have had a guardian appointed by a court, board, commission, or other lawful authority because of an intellectual disability. Similarly, the proposed new second category, at paragraph (a)(2), encompasses persons who, as a result of a permanent physical condition, have the functional capacity equivalent to a person with an intellectual disability and who have accordingly been placed in a guardianship. ATF is therefore proposing to define "intellectual disability" (also known as "intellectual developmental disorder") consistently with the latest psychiatric guidelines, in a new paragraph (b) within the definition of "adjudicated as a mental defective." In new paragraph (b)(1), ATF proposes to define intellectual disability as existing when a person (1) has a full-scale IQ score ("FSIQ") below 45 or (2) has a FSIQ less than 69 and has limitations in multiple adaptive functioning domains such that the person is incapable of living independently.

This part of the proposed definition focuses on individuals who suffer from an intellectual disability severe enough that they require guardianship and cannot live independently. This is in line with the current DSM ("Diagnostic and Statistical Manual of Mental Disorders"), which emphasizes the diagnostic significance of functional disabilities, not just low performance on an IQ test. *See* American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition – Text Revision*, 34 (2022) ("DSM-V-TR"). Like DSM-V-TR, ATF is differentiating between those with a mild intellectual disability — who would not always be covered by ATF's proposed definition of the term — and those with a more-limiting moderate, severe, or profound diagnosis — who would necessarily be covered by that definition. As the DSM-

V-TR explains, individuals with a moderate diagnosis can care for their own personal needs but require extended instruction and ongoing support from others. Individuals with a severe diagnosis require support for all daily activities and always require supervision for the well-being of themselves or others. And individuals with a profound diagnosis are dependent on others for all physical care, health, and safety. DSM-V-TR does not provide an intelligence quotient ("IQ") score for each level of severity like earlier DSM editions did.[31] Rather, DSM-V-TR notes that IQ tests are less reliable as the score gets lower and so instead bases intellectual disability on both cognitive capacity (i.e., IQ) *and* adaptive functioning, rather than IQ alone.

For individuals with an IQ of 45 or lower, ATF does not believe that a separate inquiry into adaptive functioning is necessary because adaptive deficits will be immediately apparent. Although DSM-V-TR does not include a specific IQ range for each intellectual disability diagnosis level, the previous DSM did, and they remain instructive for ATF. *See* American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition*, 40 (1994) ("DSM-IV"). Under DSM-IV, diagnoses of moderate, severe, or profound intellectual disability generally occur in individuals with an IQ of less than 50. *See id*.[32] The approximate mental age for those with a moderate intellectual disability is six- to nine-years-old; those with a severe disability have an approximate mental age of three- to six-years-old; and those with a profound intellectual disability have a mental age of 3-years-old or younger. *See Children's Health Issues*, supra note 30. Individuals in these categories usually require

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[31] "Intellectual functioning is typically measured with individually administered and psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence. Individuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally ±5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65–75 (70 ± 5). Clinical training and judgment are required to interpret test results and assess intellectual performance." DSM-V-TR at 42.

[32] *See also* Children's Health Issues — Levels of Intellectual Disability (Merck Manual Consumer Version), https://www.merckmanuals.com/home/pages-with-widgets/tables?mode=list (last visited Dec. 3, 2025) [https://perma.cc/VL3Y-XTSD].

training and support for daily living needs. ATF believes that such individuals, if placed in guardianships or found incompetent to stand trial, are categorically "adjudicated as [] mental defective[s]" for purposes of 18 U.S.C. 922(g)(4) and (d)(4), given their cognitive inability to engage in responsible adult behavior. While DSM-IV classified those with an IQ under 50 as having moderate or greater intellectual disability, ATF believes that setting the categorical IQ limit at under 45 would avoid any troubling consequences from any margin of error in intellectual testing.

Persons with a mild intellectual disability generally have IQs between 50 and 69 and may function age-appropriately. They may need support, however, for complex living tasks. It is generally believed that these individuals have an approximate mental age between 9- and 12-years-old. ATF's proposed definition of "intellectual disability" would not include individuals with mild intellectual disability unless they demonstrate significant functional impairments across multiple functional areas. This is more consistent with understandings of intellectual disability than the current regulatory criteria, under which functional inability in a single area (e.g., inability to manage money) can result in a lifetime firearms disability.

To be clear, determining whether a person has an intellectual disability is not achieved simply by conducting an IQ test. As DSM-V-TR explains, whether an individual has an intellectual disability depends on both intellectual capacity and adaptive functioning. Thus, under the proposed rule, persons with an IQ between 46 and 69 would not be determined mentally defective for firearms purposes unless there was evidence that they also exhibited significant limitations in multiple adaptive functioning domains, such that they were incapable of living independently. Persons with an IQ of 45 or less would necessarily have profound functional deficits, so, while the combination of the two would still be applicable, additional evidence on those deficits would not be necessary at that IQ level. As reflected in the four categories in paragraph (a), however, ATF's

proposed rule would not disqualify everyone who tested with an IQ of 45 or below from possessing firearms. Instead, the rule would prohibit only those found to be intellectually disabled who also had guardians appointed or who were found incompetent to stand trial. Those latter proceedings would also likely examine functional deficits.

Because all intelligence tests have a margin of error, ATF believes that an inquiry into adaptive functioning would help resolve marginal cases where a person might test with an IQ between 46 and 69. For example, an inquiry into adaptive functioning would demonstrate that a person who tests with an IQ of 53 might actually have a true IQ below 46 if the person has significant limitations across multiple adaptive functions. In such a case, the person who tests with an IQ of 53 but shows significant limitations in multiple adaptive functions would still fall within the definition of "intellectually disabled."

ATF also proposes to add a second paragraph, paragraph (b)(2), to the definition of "intellectual disability" to address proceedings where there is no explicit finding of intellectual disability according to the modern diagnostic criteria discussed above. Under this paragraph, a person would also be deemed intellectually disabled when an adjudicator makes findings that the individual has cognitive and functional deficits that would be equal to or greater than those described in paragraph (b)(1). This provision would prevent determinations of mental defectiveness from depending upon findings of fact that exactly mirror modern diagnostic criteria or other "magic words." A finding that a person has major adaptive limitations across multiple functional domains as a result of significant subnormal intelligence would still count as a determination that the person is intellectually disabled, even if there was no explicit finding of IQ on the record. For example, an adjudicator might find that, because of subnormal intelligence, a person has multiple severe functional deficits, requires constant guardian supervision, and, thus, cannot live independently. Such adjudications would suffice to establish a person's intellectual disability for purposes of the proposed rule even though they do not mention

a specific IQ number. This provision reflects that the core of being intellectually disabled is exhibiting severe functional limitations resulting from subnormal intelligence, not a specific score on an intelligence test. Again, this definition of "intellectually disabled" aligns with the current medical and psychiatric understanding of cognitive capacity. DSM-V-TR generally pulls away from specific IQ ranges, focusing instead on the patient's general functional ability in order to discern mild, moderate, severe, and profound categories of intellectual disability. *See* DSM-V-TR at 31–37.

ATF also proposes in paragraph (b)(3) to clarify that a determination of mental defectiveness under the GCA must result from a mental illness or defect, or from a permanent physical disability or disease. Under the current regulatory definition, a person could be declared mentally incompetent and trigger the firearms prohibition by merely having a fiduciary appointed due to a temporary physical condition. For example, persons in a coma for 60 days might require a temporary fiduciary to manage their financial affairs only during that time. However, records showing that the person had a fiduciary appointed could cause the person to be prohibited from possessing a firearm indefinitely. Likewise, individuals who need assistance in a single functional area (e.g., managing money) are not categorically persons who are "mentally defective" and unable to engage in responsible adult behavior. Yet, under the current regulatory definition, persons in these examples and others could be prohibited from firearm ownership for life unless they applied for relief from disability or underwent another state process to remove the resulting prohibition. That could be true even if they did not suffer from any mental illness or defect and were not ordinarily thought of as the kind of persons who, because of subnormal intelligence, could not manage their affairs and engage in responsible adult behavior. ATF believes this understanding of "mental defective" is overbroad and was not Congress's intent when enacting this provision.

The proposed rule would therefore make clear that a person who is appointed a

temporary guardian because of a temporary physical disability, or who is appointed a fiduciary solely because they need assistance managing their financial affairs, would not be "adjudicated as a mental defective" for purposes of sections 922(g)(4) and (d)(4). This revision would prevent, for example, people who require a temporary guardian during recovery from an accident or illness from being prohibited under the GCA. Accordingly, ATF is proposing to include paragraph (b)(3) under the definition of "intellectual disability," which would state: "An intellectual disability shall not be deemed to exist solely because an individual has had a temporary guardian appointed due to a transient physical disability or because an individual has had a fiduciary appointed solely to assist with managing their financial affairs."

Proposed procedural requirements for adjudications

Procedurally, ATF is proposing to establish, in a new paragraph (c) in the definition of "adjudicated as a mental defective," the minimum due process requirements that an adjudication must adhere to for a person to qualify as having been "adjudicated" as a mental defective for purposes of the GCA. While "adjudicated as a mental defective" is often found in conjunction with the second statutory prong — "committed to a mental institution" — it is not statutorily required that both occur for a person to be prohibited under 18 U.S.C. 922(g)(4) or (d)(4). Due process requirements in mental health commitment proceedings have been addressed by the Supreme Court, most notably in *Addington v. Texas,* 441 U.S. 418 (1979). However, there is little case law to explain what process is necessary for a person to be "adjudicated as a mental defective" without a subsequent commitment.

Under the current definition of the statutory term, this leads to the possibility that persons could be found to pose a danger to themselves or others or to lack the mental capacity to contract or manage their own affairs without certain procedural standards that should be met before their constitutional rights are impacted. For example, as explained

above in section II.A.2, many veterans for whom a fiduciary was appointed to handle their VA benefits were deemed prohibited persons under sections 922(g)(4) and (d)(4) of the GCA, even though no formal competency hearing was conducted. In such cases, disarmament resulted from an assessment by a single administrator.[33] The prospect of a constitutional right being stripped away without greater procedural protections raises concerns under the Second, Fifth, and Fourteenth Amendments. In addition, the plain meaning of the word "adjudication" requires the opportunity for an adversarial process. Accordingly, the proposed rule would identify the procedural requirements necessary to be "adjudicated as a mental defective," so as to provide the same level of procedural protections for any Second Amendment restriction under sections 922(g)(4) and (d)(4), whether or not it stems from a formal "commitment."

ATF proposes that an "adjudication" within the meaning of section 922(g)(4) occurs when a court, board, commission, or other lawful authority has provided individuals as to whom a determination is being made with:

(1) An in-person or remote hearing before an unbiased adjudicator;

(2) An opportunity to hear opposing evidence, to present evidence, and to confront adverse witnesses;

(3) Permission to be represented by counsel;

(4) An appointed counsel or a *guardian ad litem* when there are reasonable grounds to believe that individuals lack a sufficient factual or rational understanding of the proceedings to represent themselves or act in their own defense;

(5) Adequate notice of the hearing; and

(6) In a civil proceeding, a determination based on at least clear and convincing

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[33] *See generally* Jordan B. Cohen and Madeline D. Moreno, Cong. Research Serv., R47626, *Gun Control, Veterans' Benefits, and Mental Incompetency Determinations* (2023); *see also generally* Lynn Sears, Cong. Research Serv., IF13019, *The VA Fiduciary Program, An Overview* (2025); Jordan B. Cohen, Cong. Research Serv., TE10109, *Correcting VA's Violations of Veterans' Due Process and Second Amendment Rights* (2025).

evidence.

These are basic procedural protections. Congress has specified many of these protections in other contexts relating to federal firearms laws, so ATF believes they are likely also captured by the plain meaning of "adjudicated" in the context of the GCA.[34]

These proposed procedural protections are included to ensure that the right to possess arms is not removed without due process. For a proceeding to satisfy ATF's definition of "adjudication," a court (or other covered adjudicator) would be required to appoint counsel or *guardians ad litem* if there are reasonable grounds to believe persons are incapable of representing themselves. Persons do not have due process if they lack a sufficient factual or rational understanding of the proceedings involving them, such that they are incapable of providing for their own defense or presenting evidence on their own behalf. ATF seeks comment on this requirement, particularly on whether any jurisdictions permit potentially incompetent persons to face guardianship or other legal proceedings without either appointing counsel or a *guardian ad litem*. ATF also seeks comment on whether any jurisdictions permit competency or capacity determinations to be made without hearings, including at the election of the individual involved.

The applicable standard of proof would vary depending on the nature of the proceeding. In civil commitment proceedings, the Supreme Court has required the state to prove the necessity of commitment by clear and convincing evidence. *Addington v. Texas*, 441 U.S. 418, 433 (1979). This is because "the individual's interest in the outcome of a civil commitment proceeding," which could result in the loss of liberty, "is of such weight and gravity." *Id.* at 427. Although the term "adjudicated as a mental defective" does not require commitment, ATF believes that clear and convincing evidence should be

[34] *See, e.g.*, 18 U.S.C. 921(a)(33)(B) (providing procedural protections required for an individual to be considered to have been convicted of a misdemeanor crime of domestic violence); 34 U.S.C. 10152(a)(1)(I)(iv) (conditioning criminal justice grants for state "extreme risk protection order programs" on states' implementation of various procedural safeguards).

the general minimum standard before persons are prohibited from exercising their Second Amendment rights, and this is the standard generally employed in adult guardianship proceedings.

In criminal proceedings, however, a lower standard of proof can be more protective of the defendant. For example, in *Cooper v. Oklahoma*, 517 U.S. 348 (1996), the petitioner argued that a statutory requirement that the criminal defendant prove his incompetence to stand trial by clear and convincing evidence was a violation of due process. *Id*. at 353. The Supreme Court held that a state could not require persons to prove their incompetency by clear and convincing evidence in order to safeguard the fundamental right not to stand trial while incompetent. *Id*. at 369. Thus, in a criminal proceeding, a person may face mandatory commitment based on a preponderance of the evidence standard. *See, e.g.*, *United States v. Shaway*, 865 F.2d 856, 859–610 (7th Cir. 1989). By making clear that the "clear and convincing" standard is for civil proceedings only, this rule would not restrict application of the lower standard of proof, i.e., preponderance of the evidence, in criminal proceedings. This is necessary to avoid the anomaly that committed persons in criminal proceedings could retain their firearm rights where civilly committed persons could not, simply because criminal proceedings have burdens of proof that are more friendly to the defendant.

2. "Committed to a mental institution"

ATF also proposes revising the definition of "committed to a mental institution." The current definition of "committed to a mental institution" is "[a] formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution."

ATF proposes revising this definition in two ways. First, the proposed rule would add examples of qualifying commitments, including those removed from paragraph (b) of the "adjudicated as a mental defective" definition. The three examples from the "adjudicated" prong that would be moved into the "committed to a mental institution" prong are: (1) individuals who are found to be a danger to themselves or others; (2) individuals found insane in a criminal case; and (3) individuals found incompetent to stand trial or found not guilty by reason of lack of mental responsibility under the UCMJ.

Second, the revised definition of "committed to a mental institution" would make clear that the commitment must be "[a] formal and involuntary commitment of a person to a mental institution by a court, board, commission, or other lawful authority." This largely follows the current definition, except for the inclusion of the word "involuntary." The current regulation states that the term "includes a commitment to a mental institution involuntarily" and "does not include . . . a voluntary admission to a mental institution." 27 CFR 478.11. Accordingly, the position of ATF and the courts has long been that voluntary admissions of any kind do not qualify under the statute. Consequently, ATF is adding "involuntary" as a core part of the definition.

The definition would include a non-exhaustive list of examples that qualify as involuntary commitments for purposes of 18 U.S.C. 922(g)(4) and (d)(4). These include:

1) Commitments resulting from determinations that individuals are a danger to themselves or others based upon mental disease or defect;

2) Commitments resulting from other reasons, such as for drug use;

3) Commitments resulting from a verdict of insanity by a court in a criminal case;

4) Commitments resulting from a verdict of not guilty by reason of lack of mental responsibility pursuant to article 50a of the Uniform Code of Military Justice;

5) Commitments resulting from a person being found incompetent to stand trial under article 72b of the Uniform Code of Military Justice; and

6) Commitments resulting from a determination that a person is incompetent to stand trial in a civilian criminal case, if the basis for that determination is a mental disease or defect.

Paragraphs (1), (3), (4), and (5) would be the provisions transferred from the "adjudicated as a mental defective" prong to the "committed" prong. Again, ATF requests comments about whether this transfer will have any adverse impact on public safety. ATF is particularly interested to learn whether any individuals who would meet the current definition of "adjudicated as a mental defective" on the basis of being judicially found to be a danger to themselves or others or being found not guilty by reason of insanity would not be involuntarily committed to a mental institution.

Paragraph (2) would simply continue current practice without change. Paragraph (6), which complements paragraph (5), is added to prevent dissimilar treatment of analogous military and civilian proceedings.

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 flexibility.

This rule amends 27 CFR part 478.11 to update the definitions of "adjudicated as a mental defective" and "committed to a mental institution." ATF's aim is to both give effect to the statutory language and to ensure that all persons falling under the "adjudicated as a mental defective" prong receive due process before their Second Amendment rights are affected. The proposed amendments to the definition of

"adjudicated as a mental defective" eliminate the risk of persons losing the right to bear arms based solely on a determination that they lack the mental capacity to contract or manage their own affairs — a determination that, under past practice, was often based on findings pertaining specifically to an inability to independently manage financial affairs. The proposed amendments instead focus on an individual's overall intellectual capacity and ability to safely handle firearms. The proposed amendments would also more clearly distinguish between the definitions of "adjudicated as a mental defective" and "committed to a mental institution."

The Office of Management and Budget ("OMB") has determined that this proposed rule would be a "significant regulatory action" under Executive Order 12866.

1. Need statement

As discussed above, ATF believes its current regulation is overbroad because it encompasses individuals who do not suffer from the kinds of mental disabilities that fell within the term "mental defective" at the time the GCA was enacted. Specifically, since the regulation was first published in 1997, the term "adjudicated as a mental defective" has been interpreted to encompass individuals who have only narrow functional deficits, such as the inability to manage financial benefits, as opposed to those individuals who have broadly subnormal intellectual capacity such that they cannot responsibly handle firearms.

For example, veterans deemed incompetent to manage their financial affairs and assigned a fiduciary have been considered "adjudicated as a mental defective" under the existing interpretation of that phrase, absent any further assessment or finding as to whether they are a danger to themselves or others.[35] These VA competency determinations frequently have no nexus to a person's ability to handle firearms responsibly, and are in practice instead based largely on a person's ability to

[35] *See* supra section II.A.2.

independently manage their financial affairs. Thus, persons have been denied the Second Amendment right to bear arms simply because they are not financially responsible, even though they are otherwise able to manage their own lives. But ATF has concluded that persons with isolated functional deficits are not the kind of individuals who are mentally defective as that term was used in the GCA. Nor are such individuals the kind of irresponsible or dangerous persons who Congress sought to prohibit from possessing firearms under section 922(g)(4).[36]

Moreover, current regulations also fail to properly distinguish between "adjudicated as a mental defective" and "committed to a mental institution." For example, in the 1997 final rule, ATF accepted the DoD's recommendation to amend the definition of "adjudicated as mental defective" to include certain military personnel who were committed after being found not guilty "for reason of a lack of mental responsibility." 62 FR 34637. But individuals who are involuntarily committed for that reason or because they have been found incompetent to stand trial under the UCMJ should be primarily disqualified based on the "committed to a mental institution" prong of 18 U.S.C. 922 (g)(4) and (d)(4), not the "adjudicated as a mental defective" prong.[37] Similarly, it is ATF's understanding that individuals found by courts to be a danger to themselves or others, or found "not guilty by reason of insanity," generally are committed to mental institutions. ATF's classification of these individuals as "mental defective[s]" therefore appears to have improperly blended two different disqualifications under 18 U.S.C. 922(g)(4) and (d)(4).

Thus, this proposed rule would make two principal changes. First, the proposed rule would clarify that the term "adjudicated as a mental defective" describes only those individuals who, as a result of a serious global intellectual deficit, cannot responsibly

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[36] *See* 114 Cong. Rec. 21657, 21791, 21832, and 22270 (1968).

[37] As explained above, in separating these categories, ATF recognizes that there may still be some overlap between them.

handle firearms. The proposed rule would provide a definition of "intellectual disability" in order to clarify the level of deficit a person must generally possess in order to be considered a "mental defective" under the GCA. The proposed rule would also make clear that individuals who present solely with isolated functional deficits, such as the inability to manage their government benefits, are not mentally defective within the meaning of the GCA.

The proposed rule would also set forth several conditions that a proceeding must meet to qualify as an "adjudication" within the meaning of sections 922(g)(4) and (d)(4). Among other requirements, the proposed rule would provide that in a civil proceeding the determination of mental defectiveness must be made based on at least clear and convincing evidence. ATF determined this change is necessary because a higher evidentiary standard should be met before persons are prohibited from exercising their Second Amendment rights.

Second, the proposed rule would more explicitly distinguish the "adjudicated as a mental defective" and "committed to a mental institution" prongs of sections 922(g)(4) and (d)(4) by expressly realigning to the latter certain qualifying commitments that ATF understands to be currently encompassed by the former. Examples of commitments that would transfer over because they fit better under the "committed" prong are: (1) commitments resulting from a determination that an individual is a danger to themselves or others; (2) commitments resulting from a verdict of insanity in a criminal case; and (3) commitments resulting because the person is found incompetent to stand trial or found not guilty by reason of lack of mental responsibility under the UCMJ. The revised definition of "committed to a mental institution" would also include other examples of commitments that are already covered by the current definition.

ATF is also making clear that the term "commitment" requires "[a] formal and involuntary commitment of a person to a mental institution by a court, board,

commission, or other lawful authority." And the proposed definition would codify the longstanding position of ATF and the courts that a "commitment" under the GCA does not include "a voluntary admission to a mental institution."

2. Benefits

The proposed rule amends the definitions in 27 CFR § 478.11 to define the terms "adjudicated as a mental defective" and "committed to a mental institution." The changes to the definitions will both give effect to the statutory language and ensure that veterans (and other affected persons) can retain their Second Amendment rights when a fiduciary or limited guardian is appointed to manage their financial or personal affairs. ATF estimates that the proposed rule would beneficially impact a specific segment of the public by providing qualitative benefits primarily to current and future firearm owners who would otherwise be prohibited under 18 U.S.C. 922(g)(4) and (d)(4) because they possess narrow functional limitations, on the basis that they "[l]ack the mental capacity to contract or manage [their] own affairs." ATF does not have data on the entire subset of persons who fall into this group, but must use the best available data to estimate the size of this affected population.

The Brady Handgun Violence Prevention Act of 1993, Pub. L. 103–159, requires federal firearms licensees ("FFLs") to request background checks on prospective firearm transferees. In 1998, the Federal Bureau of Investigation ("FBI") established NICS to process these background checks. NICS queries three national databases for possible matches when conducting a NICS check. These databases are: (1) National Crime Information Center ("NCIC"), which contains records of wanted persons, subjects of protection orders, and other persons who pose a threat to officer and public safety; (2) Interstate Identification Index ("III"), which provides access to criminal history records; and (3) the NICS Indices, which contain information on prohibited persons as defined by 18 U.S.C. 922(g) or (n) or state law. The information in the NICS Indices is provided by

federal, state, local, and tribal agencies. As a result of the NICS Improvement Amendments Act of 2007 ("NIAA"), Pub. L. 110–180 (122 Stat. 2599), federal agencies are required to make available to NICS all records that are relevant to determining whether a person is disqualified from possessing or receiving a firearm under 18 U.S.C. 922(g) or (n). Federal agencies satisfy this obligation by adding applicable information to NCIC, III, or the NICS Indices. However, at the state level, providing information to NCIC, III, or the NICS Indices is optional unless otherwise required by state law or federal funding requirements.

For purposes of this population size analysis, ATF focused on the NICS Indices, which include the majority of records pertinent to adjudications that would be affected by this rule.[38] Again, records submitted to the NICS Indices are categorized according to the federal prohibitions under 18 U.S.C. 922(g) and (n), or in a catch-all file that tracks state prohibitions and court-ordered firearm restrictions. Records on persons adjudicated as mental defectives or involuntarily committed to mental institutions are entered into the NICS Indices and categorized under the 922(g)(4) prohibition. Documents relevant to this prohibition include judgment and commitment orders; sentencing orders; and records of judicial or administrative proceedings adjudicating persons' inability to manage their own affairs, if the adjudication is based on marked subnormal intelligence or mental illness, incompetency, condition, or disease.

Of the 34,036,267 active records submitted to the NICS Indices as of December 31, 2025, a total of 8,213,415, or 24 percent of all records, were categorized as falling under the section 922(g)(4) prohibition. Of the ten GCA prohibited categories, this

[38] The other two databases NICS queries, NCIC and III, consist primarily of criminal records, so these databases are generally not relevant to estimating the size of the population that will primarily benefit from the proposed rule: persons with narrow functional limitations who fall under the "[l]acks the mental capacity to contract or manage his own affairs" element of the current regulation. The NCIC and III do, however, supply data about persons found insane in a criminal case, found incompetent to stand trial, or found not guilty by reason of lack of mental responsibility, so they still have some bearing on the overall population of persons currently considered "adjudicated as a mental defective."

prohibition appears to be the second-largest source of records in the NICS Indices, second only to the 16,063,869 records submitted under the prohibition against firearm possession by illegal/unlawful aliens (18 U.S.C. 922(g)(5)). Nevertheless, the 8,213,415 number is an imprecise proxy for the population affected by the proposed rule, as it includes adjudications of mental defectiveness that would not be affected by this proposed rule, as noted above, and also includes persons who were entered into the NICS Indices because they were "committed to a mental institution" (whether separately from or in addition to having been "adjudicated as [] mental[ly] defective").

The closest proxy for the population affected by the portion of the definition ATF proposes to revise may therefore be the set of NICS Indices data submitted by the VA. As discussed in the preamble, a significant number of veterans currently fall under the "[l]acks the mental capacity to contract or manage his own affairs" provision on the basis of a single functional limitation — i.e., due to determinations that they need a fiduciary to assist them with managing VA benefits. By the end of December 31, 2025, there were 74,749 active VA records in the NICS Indices that the VA believed triggered the "adjudicated as a mental defective" prohibition. However, this number may still be overinclusive because these records could include some individuals who would continue to qualify as having been "adjudicated as a mental defective" under ATF's proposed revisions to the current regulation, such as veterans appointed guardians as a result of an intellectual disability or mental illness. In addition, an unknown percentage of these records pertain to veterans who have not attempted to purchase or possess firearms, and would continue not to even under the proposed rule. ATF therefore does not have a valid set of data for precisely assessing the number of individuals who would be affected by the changes in the proposed rule. ATF welcomes public comment on additional data sources or proxies to further estimate the affected population of individuals, veterans or otherwise, who have been deemed mentally defective by a court, board, commission, or

other lawful authority based solely on their narrow functional limitations, on the grounds that they are unable to contract or manage their own affairs within the meaning of ATF's current regulatory definition.

Regardless of the size of the affected population, they would realize the proposed amendment's qualitative benefits in three ways. First, and most broadly, the proposed rule would prevent persons from losing their Second Amendment rights based solely on a determination that they have certain narrow functional limitations. This expected benefit is impossible to quantify or monetize but can certainly be deemed valuable to an unknown proportion of current or prospective gun owners who would otherwise qualify as "adjudicated as a mental defective," as well as persons who already have lost their firearms rights on this basis under the existing definition.

Second, veterans in the affected population would realize a benefit because the proposed amendments would enable the VA to fully assess whether a veteran requires a fiduciary to assist with financial matters without fear of negatively impacting a veteran's Second Amendment rights. Additionally, such a change would allow a veteran to seek needed assistance from the VA without fear of permanently losing firearms rights, and would therefore potentially increase veterans' willingness to be treated. That would ostensibly improve their quality of life and that of their families who may depend on their proper treatment. Similar benefits would accrue to non-veterans who have had a fiduciary appointed for financial matters, but who are otherwise able to act responsibly and manage other aspects of their life.

Third, ATF expects the proposed rule would benefit certain at risk or vulnerable persons affected by the current regulatory definition, as it would obviate the collateral processes those persons encounter if they are deemed to be prohibited. Because individuals who have been appointed a fiduciary solely to assist with managing their financial affairs or who have been appointed a temporary guardian due to a temporary

physical condition would no longer be considered "adjudicated as a mental defective" under the proposed rule, they would be spared the financial burden of later applying for relief from disability under 18 U.S.C. 925(c) or a qualified state relief program,[39] or otherwise going through a cumbersome process of having their records updated and removed from NICS once they recover from their temporary physical condition or no longer have a fiduciary to manage their financial affairs. Thus, this third benefit would constitute both a qualitative benefit as well as a quantitative cost savings. In its recent proposed rule titled "Application for Relief From Disabilities Imposed by Federal Laws with Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms," 90 FR 34394 (July 22, 2025), the Department proposed a new relief from disabilities process. The Department estimated that, under this new process, applying for relief from a firearms disability will take approximately 60 minutes.

Because affected individuals falling under ATF's current definition of "adjudicated as a mental defective" would likely apply for relief from disability in their personal capacity, ATF estimates that the opportunity cost of applying for relief under section 925(c) would be based on the value of their free time or "leisure time." ATF calculated the monetized value of that time using a standard leisure wage formula. For an applicant's rate calculation, ATF relied on a methodology developed by the Department of Health and Human Services ("HHS")[40] for calculating the hourly leisure wage. Because HHS's methodology relies on Bureau of Labor Statistics ("BLS") data that is updated monthly, we did not need to use an inflation-adjusted wage rate.

Accordingly, consistent with HHS's methodology, ATF used the BLS median weekly income for full-time employees as the base for calculating the hourly leisure

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[39] *See* ATF, *List of States with a Qualifying Relief of Disability Program*, https://www.atf.gov/media/21166/download [https://perma.cc/GHQ3-9N7H)].

[40] U.S. Department of Health and Human Servs., *Valuing Time in the U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices*, at 40–41 (June 2017), https://aspe.hhs.gov/sites/default/files/private/pdf/257746/VOT.pdf (last visited April 29, 2026).

wage. Based on this methodology, ATF attributes a rounded value of $23 per hour for time spent by respondents completing the application form. Because ATF does not have data on the actual size of the affected population, ATF provides the following cost savings estimate as an illustrative case. If, for example, 10 percent of the approximately 74,000 individuals in the accumulated set of VA records submitted to NICS were prohibited because they had a fiduciary appointed solely to assist with managing their financial affairs or were placed in a temporary guardianship due to a temporary physical condition, and these veterans accordingly had to later apply for relief from firearms disability under 18 U.S.C. 925(c), that would be 7,400 veterans. This set of potentially affected persons would currently accrue a total of $170,200 in monetized time burden ($23/hour * 1 hour * 7,400), which they would then save due to this proposed rule.

In addition, the Department's proposed rule would require a $20 per-application fee to fully self-sustain the first year of the new relief program's operation.[41] As a result, assuming the Department imposes this fee and all 7,400 potential applicants would have paid it in the future, this would result in an additional future cost of $148,000 in the first year that these potential applicants would save due to ATF's proposed rule. Therefore, ATF estimates the total annual costs saved (or quantifiable benefits) in the first year of this proposed rule at $318,200. In reality, the costs saved could be greater because ATF's estimate does not encompass the entire population affected by the proposed rule, and instead is based only on data pertaining to veterans.

ATF welcomes public comments on the population that might be affected by the changes in this proposed rule; the quantifiable savings that would result from a reduction in requests for relief from disability; and the savings that members of the affected population would realize over time.

3. Costs

[41] 90 FR 34399.

Potential public safety risks of the proposed rule

In addition to the benefits discussed above, ATF estimates the proposed rule would also generate potential qualitative costs to the public. The primary cost that ATF's proposed rule would introduce is an increase in public safety risk. This could stem from persons who are currently prohibited from acquiring firearms on the basis of narrow functional limitations and happen to pose a danger to themselves or others, but who may not have been evaluated on this second basis. Under the proposed rule, however, this subset of possibly dangerous persons would no longer necessarily be prohibited possessors. Nor does this proposed rule require these persons, who are potentially suffering from mental illnesses or other conditions affecting their competency, to then undergo a mental health evaluation to determine if they can safely handle firearms and thus automatically have their ability to purchase firearms restored. The only way this subset of persons would be prevented from acquiring firearms under this proposed rule is if they are determined to fall into one of the specific categories laid out in the proposed rule — a determination which might not be within the relevant authority's remit to make even if the case supports such a finding — or if they somehow independently meet one of the other prohibited possessor categories under the GCA. In particular, under ATF's proposed realignment of certain elements of the current definition of "adjudicated as a mental defective," a finding that a person poses a danger to themselves or others is not independently sufficient to prevent them from possessing firearms. Instead, the proposed rule would raise the threshold for which persons are adjudicated as mentally deficient or are formally and involuntarily committed to a mental institution. As a result, some portion of these dangerous persons, although adjudicated or committed, would no longer be prohibited. ATF acknowledges that, while adjudications appointing a fiduciary or limited guardian do not typically address whether a person presents a danger to themselves or others, an unknown-but-greater-than-zero percentage of persons who

require these forms of assistance also *do* pose a danger to themselves or others. Currently, even if the relevant lawful authority does not specifically adjudicate on that topic, such persons are not able to acquire firearms after their adjudication and thus do not pose a risk to public safety in that manner.

This public safety cost would be experienced by the general public in addition to members of the affected population itself (i.e., those who would no longer be subject to the firearms restriction as a result of the proposed rule). This risk may be minimal, or may be considerably greater (up to and including potential mass casualty events), based upon the strength of state and federal processes regarding guardianship and involuntary commitment.

ATF welcomes public comment on the degree to which persons currently prohibited from possessing firearms under the baseline criterion of those "lack[ing] the mental capacity to contract or manage [their] own affairs" may pose a danger to themselves or others. As discussed, this affected population would no longer be prohibited from possessing firearms under the proposed rule unless they were involuntarily committed, found permanently incompetent to stand trial, or had a guardian appointed due to a severe permanent mental illness or "intellectual disability" as defined by the proposed rule.

The primary driver of the potentially increased public safety risk is the specific definitional change as proposed. While the existing definition may be overinclusive and onerous for those affected, ATF's proposed solution runs the risk of overcorrecting in the opposite direction and allowing relief to a greater segment of the affected population than warranted, given the scarcity of the data. Restricting individuals' Second Amendment rights based on the fact that they are unable to manage their VA benefits or other financial affairs may incorrectly assume that the individual poses some physical threat or possesses subnormal intelligence, without any specific finding by a judicial or other

competent authority on those questions. However, the correction that ATF proposes — amending the definition of "adjudicated as a mental defective" to eliminate the prong on "lack[ing] the mental capacity to contract or manage his own affairs" as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease — could exclude individuals (veterans and non-veterans alike) who are now captured by that prong and indeed pose a danger to themselves or to others.

ATF is proposing to amend the definition by instead requiring a finding by a competent, independent authority that the individual substantially lacks mental capacity in general. This change would require that an adjudication affecting Second Amendment rights be tied to a specific finding that a person has an intellectual disability or mental condition of substantial severity, such that it would be likely to affect their ability to safely handle firearms.

Therefore, for instance, the proposed rule would default most, if not all, persons assigned fiduciaries by the VA (e.g., a large segment of the VA's NICS Indices section 922(g)(4) entries) as not being prohibited from owning and handing firearms on that basis, even though some members of this pool could potentially be dangerous. Overall, under the proposed rule persons who are adjudicated as requiring assistance with their financial affairs would be able to possess or acquire firearms. This would occur whether the persons are veterans or non-veterans, unless there is a finding by a competent authority that they exhibit severe limits to their mental capacity indicating they lack the ability to safely handle firearms. There is a lack of naturally occurring interface between this population and authorities who could assess their total mental state under procedures that meet the conditions of the proposed rule. As a result, ATF recognizes this arrangement may be overbroad in its application and may result in persons, whom the statute intended to be prohibited, obtaining and potentially using firearms to harm

themselves or others.[42]

Potential costs to states or other entities that submit records to NICS, and soliciting public comments on such costs

As mentioned above, the FBI established the NICS system and now manages it. 28 CFR 25.5(a). FBI regulations provide that each data source that submits to NICS is "responsible for ensuring the accuracy and validity of the data it provides to the NICS Index," and further require each source to "immediately correct any record determined to be invalid or incorrect." *Id.* at § 25.5(b). While federal agencies are required to provide their relevant records to the NICS Indices, states submit theirs on a voluntary basis. *Id.* at § 25.4. Thus, states or other sources that submit records to the NICS Indices are responsible for maintaining the accuracy of the records they provide. Participating states and other sources already incur costs, such as paying employees and maintaining systems, to fulfill this responsibility. These are sunk costs.

Many states have a unified court system such that, if mental health information meeting the criteria for section 922(g)(4) is entered into the system, it is automatically sent to the NICS Indices. To comply with this proposed rule, states may need to review their previous NICS Indices entries because records previously submitted to NICS may not include language establishing that a person has a qualifying intellectual disability or mental health issue warranting guardianship, or that they otherwise meet the section 922(g)(4) criteria under ATF's proposed revised definition. The extent to which previous entries would no longer be accurate under the proposed rule will vary from state to state. Records may need to be reviewed for lack of information because such information was not collected initially, even if, in reality, facts exist that would satisfy the section

[42] For example, suicide is among the leading causes of death in the U.S., with almost 50,000 Americans each year dying by suicide. More than 70 percent of suicides by veterans use a firearm, while that figure is about 50 percent for the overall U.S. population. Given that this population is at risk, narrowing the prohibition and allowing automatic restoration of firearms across the board could have a negative impact on this group and other similarly at-risk groups.

922(g)(4) regulatory definitions as revised. Further, state proceedings may need to be reviewed to confirm that they fall within the proposed revised definition of "adjudicated." Some states may be able to perform this review expeditiously, while other states may need additional time or resources to review section 922(g)(4) records for accuracy under the proposed rule's new criteria. States might also need to review for compliance with the proposed rule any records that are appealed through a qualified state relief program. This review process would be a one-time cost to comply with this rule. Nevertheless, ATF does not believe that this one-time cost that states and other sources may incur would be substantial, as they would be unlikely to hire additional personnel and the cost of maintaining records is a sunk cost since it is a part of states' responsibility when submitting records to NICS.

However, ATF does not currently have sufficient information to understand the scope of how each state or other source may deal with extra work that would result should this definitional change go into effect. ATF is thus seeking public comment and information from states and other sources on:

- The identities of the NICS Indices sources, such as whether they are state agencies, local governments, federal agencies, etc.; the scale and scope of these sources' records submissions to NICS, especially section 922(g)(4) records; and similar information for context;
- Whether the state or other source anticipates that their records submissions — including their processes for submitting records — would have to change as a result of implementing this proposed rule, and, if so, in what ways or for what types of tasks. ATF requests details and supporting data or bases for these estimates so it can understand how processes, personnel, and systems might be impacted, and to what extent;
- What the state or other source anticipates the additional monthly or yearly cost in time or other expenses would be to come into compliance with the proposed rule, and for how

long, with supporting data or bases for the estimate;

- Whether the state or other source currently utilizes any automated systems to review records, how those systems or processes work, and how they would need to change;
- Whether a state source receives federal grants for its NICS submission processes and records, whether those grants would include the transitional costs to implement this rule, and if not, the extent of the anticipated shortfall;
- Any other changes the state or other source would need to make to their records systems or processes and the costs they might incur as a result, with details and supporting data or bases, so that ATF can understand the anticipated impact of this proposed rule.

4. Regulatory alternatives

ATF considered six alternatives: (1) continuing the status quo without changing the existing regulatory definitions; (2) issuing guidance to NICS and others who enforce sections 922(g)(4) and (d)(4); (3) proposing a rule clarifying only that VA incompetency determinations are not adjudications of mental defectiveness; (4) proposing a rule providing that the appointment of a fiduciary or guardian does not qualify as an adjudication of mental defectiveness absent a finding of dangerousness; (5) requiring affirmative clearance for certain persons to handle firearms; or (6) revising the existing regulation in the manner described in this proposed rule.

Option 1: Continuing the status quo

This is also known as the no-action alternative, which ATF considered. However, ATF believes that the existing definition of "adjudicated as a mental defective" is unnecessarily broad because it has been interpreted to restrict Second Amendment rights based on solely on a determination that a person lacks the ability to manage certain personal or financial affairs. ATF deemed this interpretation to be a qualitative burden on the public. As a result, ATF determined that it must take some action to resolve these issues.

Option 2: Guidance

ATF considered issuing guidance to relevant components and stakeholders (e.g., to FBI's NICS), that would set out updated enforcement practices and would inform them that the appointment of a fiduciary is insufficient to trigger the statutory prohibition in sections 922(g)(4) and (d)(4). The contemplated guidance would request that the components adjust their internal enforcement practices to align with ATF's revised interpretation. ATF believes providing guidance to the other components is an important option, especially in the short term. ATF considers this to be a better option than issuing a rulemaking insofar as it would inform other components of ATF's views sooner, enabling them to begin adjusting their internal guidance and practices much more quickly than if they had to wait for a regulatory change. Guidance would also contain more detailed information and explanations than would be appropriate in a regulation.

However, because ATF explicitly stated in the 1997 final rule that the VA had correctly interpreted ATF's definition of "adjudicated as a mental defective" to mean that persons found incompetent under the VA's 38 CFR 3.353 provision will be considered to meet the definition, ATF determined that guidance was an insufficient replacement for a rulemaking to revise ATF's official interpretation of the term. Moreover, as there are various sources of records to NICS, information provided in guidance to the usually-targeted stakeholders, described above, may not reach all the necessary parties. By contrast, formal rulemaking allows ATF to ensure that all involved parties are made aware of these changes, so there is consistent implementation of section 922(g)(4). The notice of proposed rulemaking also helps to solicit information from the public regarding the questions ATF presented in the preamble so that ATF may provide more clarification in the final rule regarding the difference between the "adjudicated as a mental defective" and "committed to a mental institution" prongs of the statute. If ATF merely issued guidance, its interpretation of sections 922(g)(4) and (d)(4) could not benefit from

commenters' knowledge on these issues.

Option 3: Rulemaking to alter the weight of VA processes

ATF considered proposing a rule stating only that VA proceedings would not satisfy the statute for purposes of the "adjudicated as a mental defective prong," rather than a broader rule removing the "lacks the mental capacity to contract or manage his own affairs" provision from that definition, among other changes. That option would achieve a similar result as the proposed alternative. However, ATF is concerned that there are other competency procedures beyond those conducted by the VA that would not have been captured by this approach, yet should not suffice to make someone "adjudicated as a mental defective" under the correct understanding of that phrase. ATF thus rejected this alternative.

Option 4: Rulemaking to require a finding of dangerousness

ATF also considered an alternative to correct the issues related to veterans and similarly situated non-veterans by simply amending the definition of "adjudicated as a mental defective" to make clear that the appointment of a guardian or fiduciary alone is insufficient to trigger that prong. Instead, ATF would have clarified that, to qualify under section 922(g)(4) on that basis, persons would have to have undergone a proceeding where they were found to be a danger to themselves or others. This would better limit the fiduciary trigger to persons who pose a public risk, and would not capture those who should otherwise not have their firearms rights affected. However, this alternative ultimately was not advanced over the proposed rulemaking because ATF determined that there are some individuals who suffer from an intellectual disability severe enough that they are incapable of safely handling firearms, even if they are not formally found to be dangerous to themselves or others. Thus, ATF determined that a person placed in a guardianship on the basis of demonstrating substantial intellectual deficits or as a result of mental illness should also trigger the "adjudicated as a mental defective" prong of

section 922(g)(4).

Option 5: Rulemaking to require positive clearance to handle firearms

This alternative to the proposed rule would have required that persons who lack the capacity to manage their own affairs and are appointed fiduciaries would continue to be deemed mental defectives unless an adjudicating authority also makes a specific finding or determination that these persons do not have an intellectual disability or mental condition that affects their ability to safely handle firearms. Should the VA, or any other court, board, commission, or other lawful authority determine that a person with an assigned fiduciary is not a danger to themselves or society in general, and is capable of safely handling firearms, the prohibition on receiving or possessing firearms would not apply even though the person might need a fiduciary or guardian for other purposes. This option was not ultimately advanced over the proposed rulemaking because it is not clear how lawful authorities would retroactively make such findings as to persons who have been previously deemed to require such assistance. ATF thus determined this option did not address its overarching concerns about existing infringements of constitutional rights.

Option 6: Rulemaking proposing default clearance to handle firearms (proposed rule)

ATF also considered the option of defaulting in the other direction, which means that all persons who have an adjudication solely appointing a fiduciary or guardian are automatically deemed to still have the capacity to safely handle firearms unless they fall into one of the specific categories described by the proposed rule. ATF selected this option and determined that, as noted above, the rulemaking as proposed is necessary to revise the broader definition of "adjudicated as a mental defective" contained in the current regulation. Revising the definition so that it does not cover individuals solely because they have been assigned fiduciaries or temporary guardians reduces hardship on the affected population. ATF's proposal would require that an adjudication affecting Second Amendment rights be tied to a specific finding that a person has an intellectual

disability or mental condition of such severity that ATF believes it would be likely to permanently affect their ability to safely handle firearms. ATF also believes that certain minimum procedural standards must be satisfied before a person's Second Amendment rights are affected, and thus the proposed rule establishes certain procedural requirements for a qualifying adjudication under sections 922(g)(4) and (d)(4). As discussed in the preamble, ATF believes that this interpretation of "adjudicated" adheres more faithfully to the text of the GCA and the congressional purpose underlying it. Additionally, this proposed rule clarifies the definition of "committed to a mental institution" by listing various types of qualifying commitments and reinforcing ATF's longstanding position that a commitment must be formal and involuntary to qualify.

B. Executive Order 14192

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

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). As discussed in detail in section III.A.3 of this preamble, ATF anticipates that some states and other sources of NICS records might have to expend time to review and cull existing section 922(g)(4) records they have submitted and adjust their processes to ensure they do not submit records in the future that would not comply with this proposed rule. However, ATF believes that the costs that submitting organizations incur for these purposes would not go up for most, as they are sunk costs. Therefore, ATF is soliciting public comments on these topics and may revise its Executive Order 14192 assessment as a result.

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

As far as ATF is able to ascertain at this point, 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. ATF believes that the costs that states and other sources incur to submit records to NICS or review already-submitted records would not go up for most sources, as the costs to review and maintain systems are sunk costs. However, ATF does not know the specific aspects of every single state or other source's records-submission and review systems and processes or how each one might change. ATF also lacks other relevant

context, such as the extent to which these systems receive federal grants, etc. Therefore, ATF is soliciting public comments on these topics and may revise its federalism assessment as a result. Please see section III.A.3 of this preamble for a detailed discussion on this topic.

In accordance with section 6 of Executive Order 13132 (Federalism), the Director has determined that this proposed rule could impose substantial direct compliance costs on state and local governments, preempt state law, or meaningfully implicate federalism. However, unless ATF receives data from public comments that supports a federalism impact, the information ATF currently has 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 as far as ATF is currently able to ascertain, this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined above. This rule would not impose any additional costs on small businesses or small not-for-profit organizations. However, it is

possible that this rule could have a significant economic impact on small governmental jurisdictions with populations of less than 50,000 that might submit records to NICS. Therefore, ATF is soliciting public comments to aid it in assessing this possibility and may revise its assessment as a result. Please see section III.A.3 of this preamble for a detailed discussion on this topic.

G. Unfunded Mandates Reform Act of 1995

As far as ATF is able to ascertain at this point, this proposed rule would 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. ATF believes that the costs that states and other sources incur to submit records to NICS or review already-submitted records would not go up for most sources, as the costs to review and maintain systems are sunk costs. However, ATF does not know the specific aspects of every single state or other source's records-submission and review processes or systems or how each one might change. ATF also lacks other relevant context, such as the extent to which these systems receive federal grants, etc. Therefore, ATF is soliciting public comments on these topics and may revise its unfunded mandate assessment as a result. Please see section III.A.3 of this preamble for a detailed discussion on this topic. ATF has determined that no actions are currently necessary under the provisions of the Unfunded Mandates Reform Act of 1995, but that some might become necessary based on public input.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501–3521, agencies are required to submit to OMB, for review and approval, any information collection requirements a rule creates or any impacts it has on existing information collections. An information collection includes any reporting, record-keeping,

monitoring, posting, labeling, or other similar actions an agency requires of the public. *See* 5 CFR 1320.3(c). This proposed rule would not create any new information collection requirements or impact any existing ones covered by the PRA.

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, as well as on ATF's proposal regarding moving certain components of the "adjudicated as a mental defective" definition to the definition of "committed to a mental institution." As discussed throughout section II of this preamble, ATF seeks comment on:

- The public meaning of "mental defective" in 1968.
- Whether the reorganization proposed in this rule would have any adverse impact on public safety.
- Whether there are jurisdictions where individuals may be found not guilty by reason of insanity or found in a proceeding to be a danger to themselves or others without being committed to a mental institution as proposed by the definition.
- Whether the reorganization as proposed in this rule would permit other mentally unstable persons to acquire firearms who could not do so today.
- Whether individuals in the following three categories are more properly understood to be prohibited on the basis of having been involuntarily committed than having been adjudicated as mental defectives. The three categories are: (1) individuals found to be a danger to themselves or others; (2) individuals found insane in a criminal case; and (3) individuals found incompetent to stand trial or found not guilty by reason of lack of mental responsibility under the UCMJ.
- Whether there are any jurisdictions that permit potentially incompetent persons from

undergoing guardianship or other legal proceedings without either appointing counsel or a guardian ad litem.

- Whether any jurisdictions permit competency or capacity determinations to be made without hearings, including at the election of the individual involved.

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. As discussed in section III.A.3 of this preamble, ATF seeks comment on:

- Additional data sources or proxies to further estimate the population of individuals, veterans or otherwise, who have been deemed mentally defective by a court, board, commission, or other lawful authority solely because they possess a narrow functional limitation.
- Whether there is any additional information or comment on the described affected population, i.e., persons currently prohibited from possessing firearms under the baseline criterion of those "lack[ing] the mental capacity to contract or manage [their] own affairs," and the degree to which they may pose a danger to themselves or others. ATF also seeks comment and information on potential costs to states and other sources related to maintaining and submitting records to NICS. Please see section III.A.3 of this preamble for a detailed discussion of this topic.

All comments must reference this document's RIN 1140-AB04 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 RIN 1140-AB04. 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-AB04).

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 record-keeping 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 part 478 continues to read as follows:

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

2. Revise, in § 478.11, the definitions of "Adjudicated as a mental defective" and "Committed to a mental institution" to read as follows:

§ 478.11 Meaning of terms.

* * * * *

Adjudicated as a mental defective.

(a) *Definition*. Individuals are adjudicated as a mental defective if they have —

(1) Had a guardian appointed by a court, board, commission, or other lawful authority because of an intellectual disability or mental illness;

(2) Been found by a court, board, commission, or other lawful authority to have a permanent physical condition, such as dementia, provided the individuals have reached the functional capability equivalent to that of a person with an intellectual disability and have had a guardian appointed; or

(3) Been found by a court (or by the convening authority in a court-martial) to be incompetent to stand trial based on a mental disease or defect where there is no reasonable possibility of restoring competence.

(b) *Intellectual disability*.

(1) An intellectual disability exists when an individual has a full-scale IQ score of 45 or below. An intellectual disability also exists when a person has a full-scale IQ score of less than 69 and has limitations in multiple adaptive functioning domains such that the individual is incapable of living independently.

(2) In proceedings where there is no finding of intellectual disability using the precise criteria described in paragraph (b)(1), an intellectual disability exists if the adjudicator makes findings that the individual has cognitive and functional deficits that would be equal to or greater than those described in paragraph (b)(1) of this section.

(3) An intellectual disability does not exist solely because an individual has had a temporary guardian appointed due to a transient physical disability or because an individual has had a fiduciary appointed solely to assist with managing their financial affairs.

(c) *Adjudication.* For purposes of this definition, an "adjudication" occurs when a court, board, commission, or other lawful authority has provided individuals about whom the authority is making a determination with:

(1) An in-person or remote hearing before an unbiased adjudicator;

(2) An opportunity to hear opposing evidence, to present evidence, and to confront adverse witnesses;

(3) Permission to be represented by counsel;

(4) An appointed counsel or guardian ad litem when there are reasonable grounds to believe that individuals lack sufficient mental competency to represent themselves or act in their own defense;

(5) Adequate notice of the hearing; and

(6) In a civil proceeding, a burden of proof based on at least clear and convincing evidence.

* * * * *

Committed to a mental institution.

(a) *Definition*. A formal and involuntary commitment of a person to a mental institution by a court, board, commission, or other lawful authority.

(b) *Included types*. The term includes the following types of commitments to a mental institution:

(1) Commitments resulting from determinations that individuals are a danger to themselves or others based upon mental disease or defect;

(2) Commitments resulting from other reasons, such as for drug use;

(3) Commitments resulting from a verdict of insanity by a court in a criminal case;

(4) Commitments resulting from a verdict of not guilty by reason of lack of mental responsibility pursuant to article 50a of the Uniform Code of Military Justice;

(5) Commitments resulting from a person being found incompetent to stand trial under article 72b of the Uniform Code of Military Justice; and

(6) Commitments resulting from a determination that a person is incompetent to stand trial in a civilian criminal case, if the basis for that determination is a mental disease or defect.

(c) *Not included*. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Robert Cekada,
Director.
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