

INSTRUCTION GUIDE ON THE LAW ENFORCEMENT OFFICERS SAFETY ACT

I. Purpose

This Instruction implements the Department of Homeland Security (DHS) Directive 257-01, Law Enforcement Officers Safety Act, establishes procedures with respect to retiring and retired qualified law enforcement officers and the application of the provisions of the Law Enforcement Officers Safety Act of 2004 (LEOSA).

II. Scope

This Instruction applies to all DHS Components that have retired officers who meet the definition of "qualified retired law enforcement officers" set out in the Law Enforcement Officers Safety Act (LEOSA) and defined in Section IV below. This Instruction applies to DHS Components' handling of LEOSA matters with qualified law enforcement officers who have retired from DHS Components since DHS was formed in 2003, with future such retirees, and with such retirees from predecessor agencies when these retirees make LEOSA inquiries with appropriate DHS successor Components.

III. Background

A. The Law Enforcement Officers Safety Act of 2004 (hereinafter "LEOSA" or "the act") was signed into law July 22, 2004. With certain limitations and conditions, LEOSA exempts qualified retired law enforcement officers ("retirees") from most State and local laws that prohibit the carriage of concealed firearms. LEOSA extends this exemption to any qualified law enforcement officer, as that term is defined by the Act, including local, State, and Federal law enforcement personnel. LEOSA, however, does not exempt these individuals from other Federal laws or regulations, including any restrictions on firearms carriage on transportation systems such as commercial airlines, nor does it extend to these individuals any new authority for the use of firearms or any new law enforcement powers.

B. Although LEOSA preempts State and local laws prohibiting the carrying of concealed firearms, it contains two exceptions. First, it is not construed to supersede or limit State laws that "permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property."¹ Second, it does not limit or supersede State laws that "prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park."²

IV. Definitions

A. **Identification**: Consistent with the provisions of LEOSA at 18 U.S.C. 926C(d)(2), identification for the purposes of this Instruction Guide and accompanying Directive is defined as:

1. A photographic identification issued by the organization or Component from which the individual retired from service as a law enforcement officer indicating that the individual is "retired"; and
2. A certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

DHS Components will not perform or assist with the required annual firearms testing for retirees.

B. **Qualified Retired Law Enforcement Officer**: Consistent with the provisions of LEOSA at 18 U.S.C. 926C(c), a qualified retired law enforcement officer is an officer or agent retired from a DHS Component or predecessor agency who:

1. Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;
2. Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

¹ 18 U.S.C. § 926C(b)(1).

² 18 U.S.C. § 926C(b)(2).

3. Before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more³; or

Retired from service with such organization or Component, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by the organization or Component;

4. Has a nonforfeitable right to benefits under the retirement plan of the agency;

5. During the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;

6. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

7. Is not prohibited by Federal law from receiving a firearm.

The Department recognizes that individuals who meet the definition of a qualified retired law enforcement officer under the Act may or may not meet the definition of a law enforcement officer under the Civil Service Retirement System or the Federal Employees Retirement System.

C. Those Prohibited by Federal Law From Receiving a Firearm:

Consistent with the provisions of 18 U.S.C. 922(g) and (n), those prohibited from receiving a firearm include any person who⁴:

1. Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

2. Is a fugitive from justice;

3. Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

4. Has been adjudicated as a mental defective or who has been committed to a mental institution;

³ The 15-year period includes any time in the U.S. armed forces specifically devoted to training for and full-time service in law enforcement military occupational specialties.

⁴ Federal law also precludes aliens from receiving a firearm if the alien is illegally or unlawfully present in the United States or, except as provided in 18 U.S.C. 922(y)(2), has been admitted to the United States under a non-immigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(26)).

5. Has been discharged from the Armed Forces under dishonorable conditions;
6. Having been a citizen of the United States, has renounced his citizenship;
7. Is subject to a court order that:
 - a. Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - b. Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - c. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;
8. Has been convicted in any court of a misdemeanor crime of domestic violence; or
9. Is under indictment for a crime punishable by imprisonment for a term exceeding one year.

V. Content and Procedures

A. Law Enforcement Officers About to Retire from DHS Components:

Each Component will issue a copy of LEOSA and a LEOSA Fact Sheet (or similar informational document) to its law enforcement officers and agents about to retire, as part of their retirement processing and in accordance with Component procedures. That Fact Sheet will:

1. Include information regarding LEOSA provisions exempting qualified retired law enforcement officers from certain state and local statutes prohibiting the carrying of concealed weapons.

2. Include notice that LEOSA contains no exemption from Federal statutes and regulations relating to the carrying of firearms aboard commercial aircraft and that LEOSA does not confer upon retirees any law enforcement status or arrest powers.
3. Set out the list of requirements to be considered a "qualified retired law enforcement officer" under LEOSA as well as the list of conditions that would result in a retiring law enforcement officer or agent being prohibited by Federal law from receiving a firearm.
4. Caution retiring law enforcement officers that if at any time they no longer meet the definition of a qualified retired law enforcement officer, or fall within one of the categories of individuals prohibited by Federal law from receiving a firearm, they are no longer covered by LEOSA provisions or exemptions.
5. On an annual basis, the retiree shall certify to the Component in writing, or in a manner acceptable to the Component, that the retiree is not subject to any of the disqualifiers in 18 U.S.C. 922(g) and (n) that would prohibit an individual from receiving a firearm.
6. Make clear that, based upon Component-specific procedures, the "photographic identification" referred to in LEOSA will be either the credentials (stamped or perforated "Retired") that law enforcement officers who retire in good standing will be allowed to retain when they retire or a LEOSA-specific Retired identification credential. (If applicable, the Fact Sheet will include Component instructions on how retirees request the LEOSA-specific identification.)
7. Also, make clear that retirees must obtain their annual State firearms testing "certifications" from a non-DHS issuing authority in the State in which the retiree resides, and that it is the individual retiree's responsibility to determine the requirements of his or her state of residence regarding such certifications.
8. Emphasize the importance of retirees having their "photographic identification" and up-to-date annual State firearms testing certification in their possession at all times they will be carrying a concealed firearm under the authority of LEOSA.

B. Law Enforcement Officers Who Have Previously Retired from DHS Components (or their Predecessor Agencies):


1. Components will, in accordance with Component-specific procedures to be developed by each Component, issue a copy of the LEOSA and a LEOSA Fact Sheet (similar to the Fact Sheet described above) to law enforcement officers who have previously retired from the Component or the Component's predecessor agencies and who make inquiries about LEOSA.
2. Fact Sheets from Components electing not to issue additional LEOSA-specific Retired identification cards to law enforcement retirees who, based upon their retiring in good standing, were allowed to retain and still have their active-service credentials (stamped or perforated with the word "Retired") may advise such retirees that they need only obtain the annual State firearms testing certification to be covered by LEOSA, provided that they meet all the other requirements of LEOSA as set out in the statute itself and as highlighted in the Fact Sheet.
3. Fact Sheets from Components electing to issue additional LEOSA-specific Retired identification cards will include Component-specific instructions for requesting such cards. Retirees may be required to submit supporting documentation including results of up-to-date criminal history checks and undergo further vetting as the Component sees fit. Fact Sheets from Components that have established cut-off dates because of unavailability of or excessive cost/difficulty of retrieving older records should advise retirees who retired before those dates that their requests cannot be honored (and include an explanation of the records availability retrieval reasons why their requests cannot be honored).
4. It is within the discretion of DHS and its Components to determine whether to issue the retired law enforcement identification called for under the Act. Should the Component make a finding that the subject is not qualified, or enter into an agreement in which the subject agrees that he or she is not qualified, the subject is not issued the retired law enforcement officer identification described above. Any appeal concerning a retiree's eligibility for an identification credential is resolved at the Component level.
5. If the retiree believes that the records relied on by the Component to make its determination were not correct, the retiree can, consistent with the Privacy Act, 5 U.S.C. 552a, seek the records which formed the basis of the determination and ask the agency to correct the records if the retiree believes the records to be inaccurate. The resolution of any correction shall be made at the Component level.

VI. Questions

A. Address any questions regarding this Instruction to the Director of Law Enforcement Policy in the Office of Policy Development.

B. This Instruction Guide contains one appendix:

[Appendix A](#): Sample LEOSA Fact Sheet



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Date

SAMPLE LEOSA FACT SHEET

A copy of the Law Enforcement Officers Safety Act (LEOSA, Public Law 108-277, 18 U.S.C. 926B-C) is attached. Your attention is directed especially to the provisions of Section 3 of the Act (18 U.S.C. 926C) entitled "Exemption of Qualified Retired Law Enforcement Officers from State Laws Prohibiting the Carrying of Concealed Firearms".

You will note that Section 3 of LEOSA is essentially a State law preemption statute in that it exempts "a qualified retired law enforcement officer" (see the definition below) who is carrying the required "identification" (see the definition below) from most (but not all) state and local laws that prohibit the carrying of concealed weapons. It is important to note that LEOSA contains no exemption for retirees from Federal statutes and regulations (to include those relating to firearms aboard commercial aircraft).

"A Qualified Retired Law Enforcement Officer" is, consistent with the provisions of LEOSA at 18 U.S.C. 926C(c), an officer or agent retired from a DHS Component or predecessor agency who:

- A. Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;
- B. Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
- C. Before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

Retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by the Component;

- D. Has a non-forfeitable right to benefits under the retirement plan of the Component;
- E. During the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;
- F. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- G. Is not prohibited by Federal law from receiving a firearm.

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"Those Prohibited by Federal Law From Receiving a Firearm" include, consistent with the provisions of 18 U.S.C. 922(g) and (n), any person who⁵:

- A. Has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- B. Is a fugitive from justice;
- C. Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- D. Has been adjudicated as a mental defective or who has been committed to a mental institution;
- E. Has been discharged from the Armed Forces under dishonorable conditions;
- F. Having been a citizen of the United States, has renounced his or her citizenship;
- G. Is subject to a court order that:
 - (1) Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - (2) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - (3) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;
- H. Has been convicted in any court of a misdemeanor crime of domestic violence; or

⁵ Federal law also precludes aliens from receiving a firearm if the alien is illegally or unlawfully present in the United States or, except as provided in 18 U.S.C. 922(y)(2), has been admitted to the United States under a non-immigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(26)).

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- I. Is under indictment for a crime punishable by imprisonment for a term exceeding one year.

It is important to note that retirees who either now or at some future time no longer meet any one of the requirements or become subject to any one of these prohibitions set out above would no longer be covered under the exemptions from State and local firearms laws contained in LEOSA.

On an annual basis, the retiree shall certify to the Component in writing, or in a manner acceptable to the Component, that the retiree is not subject to any of the disqualifiers in 18 U.S.C. 922(g) and (n) that would prohibit an individual from receiving a firearm.

"Identification" is, for the purposes of DHS's implementation of the LEOSA, and consistent with the provisions of LEOSA at 18 U.S.C. 926C(d)(2), defined as:

- A. A photographic identification issued by the Component from which the individual retired from service as a law enforcement officer; and

- B. A certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

Certifications Issued By the State: To meet LEOSA requirements, law enforcement retirees from DHS Components and their predecessor agencies must annually "be tested or otherwise be found ...to meet ...standards" by a non-DHS entity authorized to issue "a certification ...by the State in which the [retiree] resides" indicating that the retiree has "been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers..." The availability of such "certifications" varies by State, and it is the responsibility of the individual DHS law enforcement retiree to determine and meet the requirements of his or her state of residence for obtaining this "certification." DHS Components will not perform or assist with annual firearms testing for their retirees.

Retirees are reminded:

- A. That they must have their DHS Component (or predecessor agency) "photographic identification" **and** up-to-date annual State firearms testing "certification" in their possession at all times when they will be carrying a concealed firearm under the authority of LEOSA. Possession of the "photographic identification" alone does not authorize a retiree to carry a concealed firearm.

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B. That, in order to carry a concealed weapon under the authority of LEOSA, they must, in addition to having the required "photographic identification" and current State firearms testing "certification" in their possession, also be in compliance with all of the other requirements (set out above) of the Act concerning being a "Qualified Retired Law Enforcement Officer" who is not "Prohibited by Federal Law From Receiving a Firearm".

C. That the required DHS Component (or predecessor agency) "photographic identification" is only for the purpose of identifying them as being a retired law enforcement officer from that Component or former agency. Neither that "identification" nor LEOSA confer law enforcement status or arrest authority. The identification and the LEOSA law enforcement status do not authorize retirees to engage in any law enforcement activities or investigations.