

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

§ 478.11

(7) Exempt interstate and foreign commerce in firearms and ammunition; and

(8) Restrictions on armor piercing ammunition.

[T.D. ATF-270, 53 FR 10490, Mar. 31, 1988, as amended by T.D. ATF-354, 59 FR 7112, Feb. 14, 1994; T.D. ATF-363, 60 FR 17450, Apr. 6, 1995; T.D. ATF-401, 63 FR 35522, June 30, 1998; T.D. ATF-471, 67 FR 5425, Feb. 5, 2002]

§ 478.2 Relation to other provisions of law.

The provisions in this part are in addition to, and are not in lieu of, any other provision of law, or regulations, respecting commerce in firearms or ammunition. For regulations applicable to traffic in machine guns, destructive devices, and certain other firearms, see Part 479 of this chapter. For statutes applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see section 38 of the Arms Export Control Act (22 U.S.C. 2778) and regulations thereunder and Part 447 of this chapter. For statutes applicable to nonmailable firearms, see 18 U.S.C. 1715 and regulations thereunder.

[T.D. ATF-270, 53 FR 10490, Mar. 31, 1988]

Subpart B—Definitions

§ 478.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude other things not enumerated which are in the same general class or are otherwise within the scope thereof.

Act. 18 U.S.C. Chapter 44.

Adjudicated as a mental defective. (a) 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) Is a danger to himself or to others; or

(2) Lacks the mental capacity to contract or manage his own affairs.

(b) The term shall include—

(1) A finding of insanity by a court in a criminal case; and

(2) 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.

Admitted to the United States for lawful hunting or sporting purposes. (a) Is entering the United States to participate in a competitive target shooting event sponsored by a national, State, or local organization, devoted to the competitive use or other sporting use of firearms; or

(b) Is entering the United States to display firearms at a sports or hunting trade show sponsored by a national, State, or local firearms trade organization, devoted to the competitive use or other sporting use of firearms.

Alien. Any person not a citizen or national of the United States.

Alien illegally or unlawfully in the United States. Aliens who are unlawfully in the United States are not in valid immigrant, nonimmigrant or parole status. The term includes any alien—

(a) Who unlawfully entered the United States without inspection and authorization by an immigration officer and who has not been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (INA);

(b) Who is a nonimmigrant and whose authorized period of stay has expired or who has violated the terms of the nonimmigrant category in which he or she was admitted;

(c) Paroled under INA section 212(d)(5) whose authorized period of parole has expired or whose parole status has been terminated; or

(d) Under an order of deportation, exclusion, or removal, or under an order to depart the United States voluntarily, whether or not he or she has left the United States.

Ammunition. Ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any

firearm other than an antique firearm. The term shall not include (a) any shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing, nor (b) any unloaded, non-metallic shotgun hull or casing not having a primer.

Antique firearm. (a) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and (b) any replica of any firearm described in paragraph (a) of this definition if such replica (1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

Armor piercing ammunition. Projectiles or projectile cores which may be used in a handgun and which are constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or full jacketed projectiles larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile. The term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, frangible projectiles designed for target shooting, projectiles which the Director finds are primarily intended to be used for sporting purposes, or any other projectiles or projectile cores which the Director finds are intended to be used for industrial purposes, including charges used in oil and gas well perforating devices.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Business premises. The property on which the manufacturing or importing of firearms or ammunition or the dealing in firearms is or will be conducted. A private dwelling, no part of which is open to the public, shall not be recog-

nized as coming within the meaning of the term.

Chief, National Licensing Center. The ATF official responsible for the issuance and renewal of licenses under this part.

Collector. Any person who acquires, holds, or disposes of firearms as curios or relics.

Collection premises. The premises described on the license of a collector as the location at which he maintains his collection of curios and relics.

Commerce. Travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

Committed to a mental institution. 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.

Controlled substance. A drug or other substance, or immediate precursor, as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802. The term includes, but is not limited to, marijuana, depressants, stimulants, and narcotic drugs. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended.

Crime punishable by imprisonment for a term exceeding 1 year. Any Federal, State or foreign offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year. The term shall not include (a) any Federal or State offenses pertaining to antitrust

violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or (b) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of 2 years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for the purposes of the Act or this part, unless such pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, or unless the person is prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

Curios or relics. Firearms which are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

(a) Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof;

(b) Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; and

(c) Any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less.

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast

Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

Dealer. Any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The term shall include any person who engages in such business or occupation on a part-time basis.

Destructive device. (a) Any explosive, incendiary, or poison gas (1) bomb, (2) grenade, (3) rocket having a propellant charge of more than 4 ounces, (4) missile having an explosive or incendiary charge of more than one-quarter ounce, (5) mine, or (6) device similar to any of the devices described in the preceding paragraphs of this definition; (b) any type of weapon (other than a shotgun or a shotgun shell which the Director finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (c) any combination of parts either designed or intended for use in converting any device into any destructive device described in paragraph (a) or (b) of this section and from which a destructive device may be readily assembled. The term shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signalling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10, United States Code; or any other device which the Director finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational, or cultural purposes.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Director of Industry Operations. The principal ATF official in a Field Operations division responsible for administering regulations in this part.

Discharged under dishonorable conditions. Separation from the U.S. Armed Forces resulting from a dishonorable discharge or dismissal adjudged by a general court-martial. The term does not include any separation from the Armed Forces resulting from any other discharge, e.g., a bad conduct discharge.

Division. A Bureau of Alcohol, Tobacco and Firearms Division.

Engaged in the business—(a) Manufacturer of firearms. A person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(b) Manufacturer of ammunition. A person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(c) Dealer in firearms other than a gunsmith or a pawnbroker. A person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such a term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(d) Gunsmith. A person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such a term shall not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(e) Importer of firearms. A person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and,

(f) Importer of ammunition. A person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return form, or other document or, where no form of declaration is prescribed, with the declaration:

"I declare under the penalties of perjury that this—(insert type of document, such as, statement, application, request, certificate), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

Federal Firearms Act. 15 U.S.C. Chapter 18.

Firearm. Any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device; but the term shall not include an antique firearm. In the case of a licensed collector, the term shall mean only curios and relics.

Firearm frame or receiver. That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

Firearm muffler or firearm silencer. Any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

Friendly foreign government. Any government with whom the United States has diplomatic relations and whom the

United States has not identified as a State sponsor of terrorism.

Fugitive from justice. Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.

Handgun. (a) Any firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(b) Any combination of parts from which a firearm described in paragraph (a) can be assembled.

Hunting license or permit lawfully issued in the United States. A license or permit issued by a State for hunting which is valid and unexpired.

Identification document. A document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

Importation. The bringing of a firearm or ammunition into the United States; except that the bringing of a firearm or ammunition from outside the United States into a foreign-trade zone for storage pending shipment to a foreign country or subsequent importation into this country, pursuant to this part, shall not be deemed importation.

Importer. Any person engaged in the business of importing or bringing firearms or ammunition into the United States. The term shall include any person who engages in such business on a part-time basis.

Indictment. Includes an indictment or information in any court, under which a crime punishable by imprisonment for a term exceeding 1 year (as defined in this section) may be prosecuted, or

in military cases to any offense punishable by imprisonment for a term exceeding 1 year which has been referred to a general court-martial. An information is a formal accusation of a crime, differing from an indictment in that it is made by a prosecuting attorney and not a grand jury.

Interstate or foreign commerce. Includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia. The term shall not include commerce between places within the same State but through any place outside of that State.

Intimate partner. With respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person.

Large capacity ammunition feeding device. A magazine, belt, drum, feed strip, or similar device for a firearm manufactured after September 13, 1994, that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition, or a fixed device for a manually operated firearm, or a fixed device for a firearm listed in 18 U.S.C. 922, Appendix A.

Licensed collector. A collector of curios and relics only and licensed under the provisions of this part.

Licensed dealer. A dealer licensed under the provisions of this part.

Licensed importer. An importer licensed under the provisions of this part.

Licensed manufacturer. A manufacturer licensed under the provisions of this part.

Machine gun. Any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such

weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

Manufacturer. Any person engaged in the business of manufacturing firearms or ammunition. The term shall include any person who engages in such business on a part-time basis.

Mental institution. Includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

Misdemeanor crime of domestic violence. (a) Is a Federal, State or local offense that:

(1) Is a misdemeanor under Federal or State law or, in States which do not classify offenses as misdemeanors, is an offense punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine. (This is true whether or not the State statute specifically defines the offense as a "misdemeanor" or as a "misdemeanor crime of domestic violence." The term includes all such misdemeanor convictions in Indian Courts established pursuant to 25 CFR part 11.);

(2) Has, as an element, the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon; and

(3) Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, (e.g., the equivalent of a "common law" marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home would be similarly situated to a spouse).

(b) A person shall not be considered to have been convicted of such an offense for purposes of this part unless:

(1) The person is considered to have been convicted by the jurisdiction in which the proceedings were held.

(2) The person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(3) In the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(i) The case was tried by a jury, or

(ii) The person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(c) A person shall not be considered to have been convicted of such an offense for purposes of this part if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense) unless the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

National Firearms Act. 26 U.S.C. Chapter 53.

NICS. The National Instant Criminal Background Check System established by the Attorney General pursuant to 18 U.S.C. 922(t).

Nonimmigrant alien. An alien in the United States in a nonimmigrant classification as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

Pawnbroker. Any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money. The term shall include any person who engages in such business on a part-time basis.

Permanently inoperable. A firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a

firing condition. An acceptable method of rendering most firearms permanently inoperable is to fusion weld the chamber closed and fusion weld the barrel solidly to the frame. Certain unusual firearms require other methods to render the firearm permanently inoperable. Contact ATF for instructions.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Pistol. A weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s).

Principal objective of livelihood and profit. The intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents such as improving or liquidating a personal firearms collection: *Provided*, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this part, the term "terrorism" means activity, directed against United States persons, which—

(a) Is committed by an individual who is not a national or permanent resident alien of the United States;

(b) Involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(c) Is intended—

(1) To intimidate or coerce a civilian population;

(2) To influence the policy of a government by intimidation or coercion; or

(3) To affect the conduct of a government by assassination or kidnapping.

Published ordinance. A published law of any political subdivision of a State which the Director determines to be relevant to the enforcement of this part and which is contained on a list compiled by the Director, which list is

incorporated by reference in the FEDERAL REGISTER, revised annually, and furnished to licensees under this part.

Renounced U.S. citizenship. (a) A person has renounced his U.S. citizenship if the person, having been a citizen of the United States, has renounced citizenship either—

(1) Before a diplomatic or consular officer of the United States in a foreign state pursuant to 8 U.S.C. 1481(a)(5); or

(2) Before an officer designated by the Attorney General when the United States is in a state of war pursuant to 8 U.S.C. 1481(a)(6).

(b) The term shall not include any renunciation of citizenship that has been reversed as a result of administrative or judicial appeal.

Revolver. A projectile weapon, of the pistol type, having a breechloading chambered cylinder so arranged that the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing.

Rifle. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

Semiautomatic assault weapon. (a) Any of the firearms, or copies or duplicates of the firearms in any caliber, known as:

(1) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),

(2) Action Arms Israeli Military Industries UZI and Galil,

(3) Beretta Ar70 (SC-70),

(4) Colt AR-15,

(5) Fabrique National FN/FAL, FN/LAR, and FNC,

(6) SWD M-10, M-11, M-11/9, and M-12,

(7) Steyr AUG,

(8) INTRATEC TEC-9, TEC-DC9 and TEC-22, and

(9) Revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;

(b) A semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of—

(1) A folding or telescoping stock,

(2) A pistol grip that protrudes conspicuously beneath the action of the weapon,

(3) A bayonet mount,

(4) A flash suppressor or threaded barrel designed to accommodate a flash suppressor, and

(5) A grenade launcher;

(c) A semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of—

(1) An ammunition magazine that attaches to the pistol outside of the pistol grip,

(2) A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer,

(3) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned,

(4) A manufactured weight of 50 ounces or more when the pistol is unloaded, and

(5) A semiautomatic version of an automatic firearm; and

(d) A semiautomatic shotgun that has at least 2 of—

(1) A folding or telescoping stock,

(2) A pistol grip that protrudes conspicuously beneath the action of the weapon,

(3) A fixed magazine capacity in excess of 5 rounds, and

(4) An ability to accept a detachable magazine.

Semiautomatic pistol. Any repeating pistol which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

Semiautomatic rifle. Any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

Semiautomatic shotgun. Any repeating shotgun which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

Short-barreled rifle. A rifle having one or more barrels less than 16 inches in length, and any weapon made from a rifle, whether by alteration, modification, or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

Short-barreled shotgun. A shotgun having one or more barrels less than 18 inches in length, and any weapon made from a shotgun, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than 26 inches.

Shotgun. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

State. A State of the United States. The term shall include the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

State of residence. The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is on active duty as a member of the Armed Forces, the individual's State of residence is the State in which his or her permanent duty station is located. An alien who is legally in the United States shall be considered to be a resident of a State only if the alien is residing in the State and has resided in the State for a period of at least 90 days prior to the date of sale or delivery of a firearm. The following are examples that illustrate this definition:

Example 1. A maintains a home in State X. A travels to State Y on a hunting, fishing, business, or other type of trip. A does not become a resident of State Y by reason of such trip.

Example 2. A is a U.S. citizen and maintains a home in State X and a home in State Y. A resides in State X except for weekends or the summer months of the year and in State Y for the weekends or the summer months of the year. During the time that A actually resides in State X, A is a resident of State X, and during the time that A actually resides in State Y, A is a resident of State Y.

Example 3. A, an alien, travels on vacation or on a business trip to State X. Regardless of the length of time A spends in State X, A does not have a State of residence in State X. This is because A does not have a home in State X at which he has resided for at least 90 days.

Unlawful user of or addicted to any controlled substance. A person who uses a controlled substance and has lost the power of self-control with reference to the use of controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past 5 years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure.

Unserviceable firearm. A firearm which is incapable of discharging a shot by means of an explosive and is incapable of being readily restored to a firing condition.

U.S.C. The United States Code.

(5 U.S.C. 552(a), 80 Stat. 383, as amended; 18 U.S.C. 847 (84 Stat. 959); 18 U.S.C. 926 (82 Stat. 1226))

[T.D. ATF-48, 43 FR 13536, Mar. 31 1978; 44 FR 55842, Sept. 28, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 478.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Subpart C—Administrative and Miscellaneous Provisions

§ 478.21 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

(5 U.S.C. 552(a); 80 Stat. 383, as amended)

[T.D. ATF-92, 46 FR 46915, Sept. 23, 1981, as amended by T.D. ATF-249, 52 FR 5962, Feb. 27, 1987; T.D. ATF-270, 53 FR 10492, Mar. 31, 1988; T.D. 372, 61 FR 20724, May 8, 1996]

§ 478.22 Alternate methods or procedures; emergency variations from requirements.

(a) *Alternate methods or procedures.* The licensee, on specific approval by the Director as provided in this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when it is found that:

(1) Good cause is shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part. Where the licensee desires to

Firearms Transaction Record

WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. 921 et. seq., are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's/Seller's
Transaction Serial
Number (If any)

Read the Notices, Instructions, and Definitions on this form. Prepare in original only at the licensed premises ("licensed premises" includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless the transaction qualifies under 18 U.S.C. 922(c). All entries must be handwritten in ink. "PLEASE PRINT."

Section A - Must Be Completed Personally By Transferee/Buyer

1. Transferee's/Buyer's Full Name (If legal name contains an initial only, record "IO" after the initial. If no middle initial or name, record "NMN".)

Last Name (Including suffix (e.g., Jr, Sr, II, III))

First Name

Middle Name

2. Current State of Residence and Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.)

Number and Street Address

City

County

State

ZIP Code

3. Place of Birth

U.S. City and State

-OR-

Foreign Country

4. Height

Ft. _____

In. _____

5. Weight

(Lbs.)

6. Sex

☐ Male

☐ Female

7. Birth Date

Month

Day

Year

8. Social Security Number (Optional, but will help prevent misidentification)

9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.)

10.a. Ethnicity

☐ Hispanic or Latino

☐ Not Hispanic or Latino

10.b. Race (In addition to ethnicity, select one or more race in 10.b. Both 10.a. and 10.b. must be answered.)

☐ American Indian or Alaska Native

☐ Asian

☐ Black or African American

☐ Native Hawaiian or Other Pacific Islander

☐ White

11. Answer the following questions by checking or marking "yes" or "no" in the boxes to the right of the questions.

Yes No

a. Are you the actual transferee/buyer of the firearm(s) listed on this form? **Warning: You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer the firearm(s) to you. Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b. (See Instructions for Question 11.a.)**

☐ ☐

b. Are you under indictment or information in any court for a felony, or any other crime for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)

☐ ☐

c. Have you ever been convicted in any court of a felony, or any other crime for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)

☐ ☐

d. Are you a fugitive from justice? (See Instructions for Question 11.d.)

☐ ☐

e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? **Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.**

☐ ☐

f. Have you ever been adjudicated as a mental defective OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)

☐ ☐

g. Have you been discharged from the Armed Forces under dishonorable conditions?

☐ ☐

h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)

☐ ☐

i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)

☐ ☐

12.a. Country of Citizenship: (Check/List more than one, if applicable. Nationals of the United States may check U.S.A.)

☐ United States of America (U.S.A.)

☐ Other Country/Countries (Specify)

Yes No

12.b. Have you ever renounced your United States citizenship?

☐ ☐

12.c. Are you an alien illegally or unlawfully in the United States?

☐ ☐

12.d.1. Are you an alien who has been admitted to the United States under a nonimmigrant visa? (See Instructions for Question 12.d.)

☐ ☐

12.d.2. If "yes", do you fall within any of the exceptions stated in the instructions?

☐ N/A

☐ ☐

13. If you are an alien, record your U.S.-Issued Alien or Admission number (AR#, USCIS#, or I94#):

I certify that my answers in Section A are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. I understand that answering "yes" to question 11.a. if I am not the actual transferee/buyer is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I understand that a person who answers "yes" to any of the questions 11.b. through 11.i and/or 12.b. through 12.c. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 12.d.1. is prohibited from receiving or possessing a firearm, unless the person answers "yes" to question 12.d.2. and provides the documentation required in 18.c. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of Federal law. (See Instructions for Question 14.)

14. Transferee's/Buyer's Signature	15. Certification Date
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Section B - Must Be Completed By Transferor/Seller

16. Type of firearm(s) to be transferred (check or mark all that apply): <input type="checkbox"/> Handgun <input type="checkbox"/> Long Gun (rifles or shotguns) <input type="checkbox"/> Other Firearm (frame, receiver, etc. See Instructions for Question 16.)	17. If transfer is at a qualifying gun show or event: Name of Function: _____ City, State: _____
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18.a. Identification (e.g., Virginia Driver's license (VA DL) or other valid government-issued photo identification.) (See Instructions for Question 18.a.)	Issuing Authority and Type of Identification			Number on Identification		Expiration Date of Identification (if any)		
						Month	Day	Year

18.b. Supplemental Government Issued Documentation (if identification document does not show current residence address) (See Instructions for Question 18.b.)

18.c. Exception to the Nonimmigrant Alien Prohibition: If the transferee/buyer answered "YES" to 12.d.2. the transferor/seller must record the type of documentation showing the exception to the prohibition and attach a copy to this ATF Form 4473. (See Instructions for Question 18.c.)

Questions 19, 20, or 21 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions for Questions 19, 20 and 21.)

19.a. Date the transferee's/buyer's identifying information in Section A was transmitted to NICS or the appropriate State agency: Month Day Year	19.b. The NICS or State transaction number (if provided) was:
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19.c. The response initially (first) provided by NICS or the appropriate State agency was: <input type="checkbox"/> Proceed <input type="checkbox"/> Delayed <input type="checkbox"/> Denied [The firearm(s) may be transferred on <input type="checkbox"/> Cancelled _____ if State law permits (optional)]	19.d. The following response(s) was/were later received from NICS or the appropriate State agency: <input type="checkbox"/> Proceed _____ (date) <input type="checkbox"/> Overturned <input type="checkbox"/> Denied _____ (date) <input type="checkbox"/> Cancelled _____ (date) <input type="checkbox"/> No response was provided within 3 business days.
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19.e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on: _____ (date). ☐ Proceed ☐ Denied ☐ Cancelled

19.f. The name and Brady identification number of the NICS examiner. (Optional) _____ (name) _____ (number)	19.g. Name of FFL Employee Completing NICS check. (Optional) _____
---	---

20. ☐ No NICS check was required because a background check was completed during the NFA approval process on the individual who will receive the NFA firearm(s), as reflected on the approved NFA application. (See Instructions for Question 20.)

21. ☐ No NICS check was required because the transferee/buyer has a valid permit from the State where the transfer is to take place, which qualifies as an exemption to NICS. (See Instructions for Question 21.)

Issuing State and Permit Type	Date of Issuance (if any)	Expiration Date (if any)	Permit Number (if any)
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Section C - Must Be Completed Personally By Transferee/Buyer

If the transfer of the firearm(s) takes place on a different day from the date that the transferee/buyer signed Section A, the transferee/buyer must complete Section C immediately prior to the transfer of the firearm(s). (See Instructions for Question 22 and 23.)

I certify that my answers to the questions in Section A of this form are still true, correct, and complete.

22. Transferee's/Buyer's Signature	23. Recertification Date
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Transferor/Seller Continue to Next Page
STAPLE IF PAGES BECOME SEPARATED

Section D - Must Be Completed By Transferor/Seller Even If The Firearm(s) is Not Transferred

24. Manufacturer and Importer (If any) (If the manufacturer and importer are different, the FFL must include both.)	25. Model (If Designated)	26. Serial Number	27. Type (See Instructions for Question 27.)	28. Caliber or Gauge
1.				
2.				
3.				
4.				

REMINDER - By the Close of Business Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days

29. Total Number of Firearms Transferred (Please handwrite by printing e.g., zero, one, two, three, etc. Do not use numerals.)	30. Check if any part of this transaction is a pawn redemption. <input type="checkbox"/> Line Number(s) From Question 24 Above:
31. For Use by Licensee (See Instructions for Question 31.)	32. Check if this transaction is to facilitate a private party transfer. <input type="checkbox"/> (See Instructions for Question 32.)
33. Trade/corporate name and address of transferor/seller and Federal Firearm License Number (Must contain at least first three and last five digits of FFL Number X-XX-XXXXX.) (Hand stamp may be used.)	

The Person Transferring The Firearm(s) Must Complete Questions 34-37.

For Denied/Cancelled Transactions, the Person Who Completed Section B Must Complete Questions 34-36.

I certify that: (1) I have read and understand the Notices, Instructions, and Definitions on this ATF Form 4473; (2) the information recorded in Sections B and D is true, correct, and complete; and (3) this entire transaction record has been completed at my licensed business premises ("licensed premises" includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless this transaction has met the requirements of 18 U.S.C. 922(c). Unless this transaction has been denied or cancelled, I further certify on the basis of — (1) the transferee's/buyer's responses in Section A (and Section C, if applicable); (2) my verification of the identification recorded in question 18 (and my re-verification at the time of transfer, if Section C was completed); and (3) State or local law applicable to the firearms business — it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

34. Transferor's/Seller's Name (Please print)	35. Transferor's/Seller's Signature	36. Transferor's/Seller's Title	37. Date Transferred
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NOTICES, INSTRUCTIONS, AND DEFINITIONS

Purpose of the Form: The information and certification on this form are designed so that a person licensed under 18 U.S.C. 923 may determine if he/she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee/buyer of certain restrictions on the receipt and possession of firearms. The transferor/seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction. Consequently, the transferor/seller must be familiar with the provisions of 18 U.S.C. 921-931 and the regulations in 27 CFR Parts 478 and 479. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a resident of another State, the transferor/seller is presumed to know the applicable State laws and published ordinances in both the transferor's/seller's State and the transferee's/buyer's State. (See ATF Publication 5300.5, State Laws and Published Ordinances.)

Generally, ATF Form 4473 must be completed at the licensed business premises when a firearm is transferred over-the-counter. Federal law, 18 U.S.C. 922(c), allows a licensed importer, manufacturer, or dealer to sell a firearm to a nonlicensee who does not appear in person at the licensee's business premises only if the transferee/buyer meets certain requirements. These requirements are set forth in section 922(c), 27 CFR 478.96(b), and ATF Procedure 2013-2.

After the transferor/seller has completed the firearms transaction, he/she must make the completed, original ATF Form 4473 (which includes the Notices, General Instructions, and Definitions), and any supporting documents, part of his/her permanent records. Such Forms 4473 must be retained for at least 20 years and after that period may be submitted to ATF. Filing may be chronological (by date of disposition), alphabetical (by name of purchaser), or numerical (by transaction serial number), as long as all of the transferor's/seller's completed Forms 4473 are filed in the same manner.

FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED: If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer is not completed after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his/her records for at least 5 years. Forms 4473 with respect to which a sale, delivery, or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

If the transferor/seller or the transferee/buyer discovers that an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and the transferor/seller or the transferee/buyer wishes to correct the omission(s) or error(s), photocopy the inaccurate form and make any necessary additions or revisions to the photocopy. The transferor/seller should only make changes to Sections B and D. The transferee/buyer should only make changes to Section A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of the transferor's/seller's permanent records.

Exportation of Firearms: The State or Commerce Departments may require a firearms exporter to obtain a license prior to export. **Warning:** Any person who exports a firearm without proper authorization may be fined not more than \$1,000,000 and/or imprisoned for not more than 20 years. See 22 U.S.C. 2778(c).

Section A

The transferee/buyer must personally complete Section A of this form and certify (sign) that the answers are true, correct, and complete. However, if the transferee/buyer is unable to read and/or write, the answers (other than the signature) may be completed by another person, excluding the transferor/seller. Two persons (other than the transferor/seller) must then sign as witnesses to the transferee's/buyer's answers and signature/certification in question 14.

When the transferee/buyer of a firearm is a corporation, company, association, partnership, or other such business entity, an officer authorized to act on behalf of the business must complete Section A of the form with his/her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity; and (B) the name and address of that business entity.

Question 1. If the transferee's/buyer's name in question 1 is illegible, the transferor/seller must print the transferee's/buyer's name above the name written by the transferee/buyer.

Question 2. Current Residence Address: A rural route (RR) may be accepted provided the transferee/buyer lives in a State or locality where it is considered a legal residence address. County and Parish are one and the same.

If the transferee/buyer is a member of the Armed Forces on active duty, his/her State of residence is the State in which his/her permanent duty station is located. If the service member is acquiring a firearm in a State where his/her permanent duty station is located, but resides in a different State, the transferee/buyer must list both his/her permanent duty station address and his/her residence address in response to question 2. If the transferee/buyer has two States of residence, the transferee/buyer should list his/her current residence address in response to question 2 (*e.g., if the transferee/buyer is purchasing a firearm while staying at his/her weekend home in State X, he/she should list the address in State X in response to question 2*).

Question 9. Unique Personal Identification Number (UPIN): For transferees/buyers approved to have information maintained about them in the FBI NICS Voluntary Appeal File, NICS will provide them with a UPIN, which the transferee/buyer should record in question 9. The licensee should provide the UPIN when conducting background checks through the NICS or the State POC.

Question 10.a. and 10.b. Federal regulations (27 CFR 478.124(c)(1)) require licensees to obtain the race of the transferee/buyer. This information helps the FBI and/or State POC make or rule out potential matches during the background check process and can assist with criminal investigations. Pursuant to Office of Management and Budget (OMB), effective January 1, 2003, all Federal agencies requiring collection of race and ethnicity information on administrative forms and records, were required to collect this information in a standard format. (See 62 FR 58782) The standard OMB format consists of two categories for data on ethnicity: "Hispanic or Latino," and "Not Hispanic or Latino" and five categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White.

Ethnicity refers to a person's heritage. Persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race, are considered Hispanic or Latino.

Race - one or more of the following responses must be selected: (1) American Indian or Alaska Native - A person having origins in any of the original peoples of North and South America (including Central America), and who maintains a tribal affiliation or community attachment; (2) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam; (3) Black or African American - A person having origins in any of the Black racial groups of Africa; (4) Native Hawaiian or Other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands; and (5) White - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa. Any other race or ethnicity that does not fall within those indicated, please select the closest representation.

Question 11.a. Actual Transferee/Buyer: For purposes of this form, a person is the actual transferee/buyer if he/she is purchasing the firearm for him/herself or otherwise acquiring the firearm for him/herself. (*e.g., redeeming the firearm from pawn, retrieving it from consignment, firearm raffle winner*). A person is also the actual transferee/buyer if he/she is legitimately purchasing the firearm as a bona fide gift for a third party. A gift is not bona fide if another person offered or gave the person completing this form money, service(s), or item(s) of value to acquire the firearm for him/her, or if the other person is prohibited by law from receiving or possessing the firearm.

Actual TRANSFEREE/buyer examples: Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith (*who may or may not be prohibited*). Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is NOT THE

Page 4 of 6

ACTUAL TRANSFEREE/BUYER of the firearm and must answer "NO" to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown buys the firearm with his own money to give to Mr. Black as a gift (*with no service or tangible thing of value provided by Mr. Black*), Mr. Brown is the actual transferee/buyer of the firearm and should answer "YES" to question 11.a. However, the transferor/seller may not transfer a firearm to any person he/she knows or has reasonable cause to believe is prohibited under 18 U.S.C. 922(g), (n) or (x). **EXCEPTION:** If a person is picking up a repaired firearm(s) for another person, he/she is not required to answer 11.a. and may proceed to question 11.b.

Question 11.b. - 12. Generally, 18 U.S.C. 922(g) prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a felony in any Federal, State or local court, or any other crime, punishable by imprisonment for a term exceeding one year (*this does not include State misdemeanors punishable by imprisonment of two years or less*); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated as a mental defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; is subject to certain restraining orders; convicted of a misdemeanor crime of domestic violence under Federal, State or Tribal law; has renounced his/her U.S. citizenship; is an alien illegally in the United States or an alien admitted to the United States under a nonimmigrant visa. Furthermore, section 922(n) prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony in any Federal, State or local court, or any other crime, punishable by imprisonment for a term exceeding one year. An information is a formal accusation of a crime verified by a prosecutor.

A member of the Armed Forces must answer "yes" to 11.b. or 11.c. if charged with an offense that was either referred to a General Court Martial, or at which the member was convicted. Discharged "under dishonorable conditions" means separation from the Armed Forces resulting from a dishonorable discharge or dismissal adjudged by a General Court-Martial. That term does not include any other discharge or separation from the Armed Forces.

EXCEPTION: A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had their civil rights (*the right to vote, sit on a jury, and hold public office*) taken away and later restored, AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception, or who receive relief from disabilities under 18 U.S.C. 925(c), should answer "no" to the applicable question.

Question 11.d. Fugitive from Justice: Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.

Question 11.f. Adjudicated as a Mental Defective: 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) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include: (1) a finding of insanity by a court in a criminal case; and (2) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

Committed to a Mental Institution: 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.

EXCEPTION: Under the NICS Improvement Amendments Act of 2007, a person who has been adjudicated as a mental defective or committed to a mental institution in a State proceeding is not prohibited by the adjudication or commitment if

the person has been granted relief by the adjudicating/committing State pursuant to a qualifying mental health relief from disabilities program. Also, a person who has been adjudicated as a mental defective or committed to a mental institution by a department or agency of Federal Government is not prohibited by the adjudication or commitment if either: (a) the person's adjudication or commitment was set-aside or expunged by the adjudicating/committing agency; (b) the person has been fully released or discharged from all mandatory treatment, supervision, or monitoring by the agency; (c) the person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication/commitment; or (d) the adjudication or commitment, respectively, is based solely on a medical finding of disability, without an opportunity for a hearing by a court, board, commission, or other lawful authority, and the person has not been adjudicated as a mental defective consistent with section 922(g)(4) of title 18, United States Code; (e) the person was granted relief from the adjudicating/committing agency pursuant to a qualified mental health relief from disabilities program. **Persons who fall within one of the above exceptions should answer "no" to question 11.f.** This exception to an adjudication or commitment by a Federal department or agency does **not** apply to any person who was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

Question 11.h. Qualifying Restraining Orders: Under 18 U.S.C. 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking, or threatening an intimate partner 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)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) 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. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or has cohabitated with the person.

Question 11.i. Misdemeanor Crime of Domestic Violence: A Federal, State, local, or tribal offense that is a misdemeanor under Federal, State, or tribal law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (e.g., *assault and battery*), if the offense is committed by one of the defined parties. (See *Exception to 11.b. - 12.*) A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; or (2) if the person was entitled to a jury, was tried by a jury, or gave up the right to a jury trial. Persons subject to this exception should answer "no" to 11.i.

Question 12.d. Immigration Status: An alien admitted to the United States under a nonimmigrant visa includes, among others, persons visiting the United States temporarily for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain temporary foreign workers. These aliens must answer "yes" to this question and provide the additional documentation required under question 18.c. Permanent resident aliens and aliens legally admitted to the United States pursuant to either the Visa Waiver Program or to regulations otherwise exempting them from visa requirements may answer "no" to this question and are not required to submit the additional documentation under question 18.c.

Question 13. U.S.-issued Alien Number or Admission Number: U.S.-issued alien and admission numbers may be found on the following U.S. Department of Homeland Security documents: Legal Resident Card or Employment Authorization Card (AR# or USCIS#); Arrival/Departure Record, Form I94, or Form 797A (I94#). Additional information can be obtained from www.cbp.gov. If you are a U.S. citizen or U.S. national then this question should be left blank.

Question 14. Under 18 U.S.C. 922(a)(1), it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he/she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal

objective of livelihood and profit through the repetitive purchase and resale of firearms. A license is not required of a person who only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his/her personal collection of firearms.

Section B

Question 16. Type of Firearm(s): "Other" refers to frames, receivers and other firearms that are neither handguns nor long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell, or National Firearms Act (NFA) firearms, including silencers.

If a frame or receiver can only be made into a long gun (*rifle or shotgun*), it is still a frame or receiver not a handgun or long gun. However, frames and receivers are still "firearms" by definition, and subject to the same GCA limitations as any other firearms. See Section 921(a)(3)(B). Section 922(b)(1) makes it unlawful for a licensee to sell any firearm other than a shotgun or rifle to any person under the age of 21. Since a frame or receiver for a firearm, to include one that can only be made into a long gun, is a "firearm other than a shotgun or rifle," it cannot be transferred to anyone under the age of 21, nor can these firearms be transferred to anyone who is not a resident of the State where the transfer is to take place. Also, note that multiple sales forms are not required for frames or receivers of any firearms, or pistol grip shotguns, since they are not "pistols or revolvers" under Section 923(g)(3)(A).

Question 17. Qualifying Gun Show or Event: As defined in 27 CFR 478.100, a gun show or event is a function sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

Question 18.a. Identification: Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the transferee/buyer. The transferee/buyer **must** provide a valid government-issued photo identification document to the transferor/seller that contains the transferee's/buyer's name, residence address, and date of birth. A driver's license or an identification card issued by a State in place of a license is acceptable. Social Security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. See instructions for question 18.b. Supplemental Documentation.

If the transferee/buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his/her permanent duty station is located, but he/she has a driver's license from another State, the transferor/seller should list the transferee's/buyer's military identification card and official orders showing where his/her permanent duty station is located in response to question 18.a. Licensees may accept electronic PCS orders to establish residency.

Question 18.b. Supplemental Documentation: Licensees may accept a combination of valid government-issued documents to satisfy the identification document requirements of the law. The required valid government-issued photo identification document bearing the name, photograph, and date of birth of transferee/buyer may be supplemented by another valid, government-issued document showing the transferee's/buyer's residence address. This supplemental documentation should be recorded in question 18.b., with the issuing authority and type of identification presented. For example, if the transferee/buyer has two States of residence and is trying to buy a handgun in State X, he may provide a driver's license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address. A valid electronic document from a government website may be used as supplemental documentation provided it contains the transferee's/buyer's name and current residence address.

Question 18.c. Exceptions to the Nonimmigrant Alien Prohibition and Acceptable Documentation: An alien admitted to the United States under a nonimmigrant visa is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued by the Federal Government, a State or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired; (2) was admitted to the United States for lawful hunting or sporting purposes; (3) has received a waiver from the prohibition from the Attorney General of the United States; (4) is an official representative of a foreign government who is accredited to the United States Government or the Government's mission to an international organization having its

headquarters in the United States; (5) is an official representative of a foreign government who is en route to or from another country to which that alien is accredited; (6) is an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or (7) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

Question 19. NICS BACKGROUND CHECKS: 18 U.S.C. 922(t) requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer, or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include State agencies designated as points-of-contact ("or POCs") to conduct NICS checks for the Federal Government.

The licensee should NOT contact NICS and must stop the transaction if there is reasonable cause to believe that the transferee/buyer is prohibited from receiving or possessing a firearm, including if: the transferee/buyer answers "no" to question 11.a.; the transferee/buyer answers "yes" to any question in 11.b. - 11.i. or 12.b. - 12.c.; the transferee/buyer has answered "yes" to question 12.d.i., and answered "no" to question 12.d.2.; or the transferee/buyer cannot provide the documentation required by questions 18.a, b, or c. **WARNING:** Any person who transfers a firearm to any person he/she knows or has reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law, even if the transferor/seller has complied with the Federal background check requirements.

At the time that NICS is contacted, the licensee must record in question 19.a. - 19.c.: the date of contact, the NICS (*or State*) transaction number, and the initial (first) response provided by NICS or the State. The licensee may record the date the firearms may be transferred to the transferee/buyer (also known as the Missing Disposition Information (MDI) date) in 19.c. that NICS provides for delayed transactions (*States may not provide this date*). If the licensee receives any subsequent response(s) before transferring the firearm, the licensee must record in question 19.d. any response later provided by NICS or the State, or that no response was provided within 3 business days. If the transaction was denied and later overturned in addition to checking the "Proceed" and entering the date, the licensee must also check the "Overturned" box and, if provided, attach the overturn certificate issued by NICS or the State POC to the ATF Form 4473. If the licensee receives a response from NICS or the State after the firearm has been transferred, he/she must record this information in question 19.e. **Note:** States acting as points of contact for NICS checks may use terms other than "*proceed*," "*delayed*," "*cancelled*," or "*denied*." In such cases, the licensee should check the box that corresponds to the State's response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.

NICS responses: If NICS provides a "*proceed*" response, the transaction may proceed. If NICS provides a "*cancelled*" or "*denied*" response, the transferor/seller is prohibited from transferring the firearm to the transferee/buyer. If NICS provides a "*delayed*" response, the transferor/seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the transferor/seller that the transferee's/buyer's receipt or possession of the firearm would be in violation of law. (See 27 CFR 478.102(a) for an example of how to calculate 3 business days.) If NICS provides a "*delayed*" response, NICS also will provide a Missing Disposition Information (MDI) date that calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. *State law may impose a waiting period on transferring firearms.*

Questions 20 and 21. NICS Exceptions: A NICS check is not required if the transfer qualifies for any of the exceptions in 27 CFR 478.102(d). Generally these include: (a) transfers of National Firearms Act firearms to an individual who has undergone a background check during the NFA approval process; (b) transfers where the transferee/buyer has presented the licensee with a permit or license that allows the transferee/buyer to possess, acquire, or carry a firearm, and the permit has been recognized by ATF as a valid alternative to the NICS check requirement; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. If the transfer qualifies for one of these exceptions, the licensee must obtain the documentation required by 27 CFR 478.131. A firearm must **not** be transferred to any transferee/buyer who fails to provide such documentation.

A NICS check must be conducted if an NFA firearm has been approved for transfer to a trust, or to a legal entity such as a corporation, and no background check was conducted as part of the NFA approval process on the individual who will receive the firearm. Individuals who have undergone a background check during the NFA application process are listed on the approved NFA transfer form.

Section C

Questions 22 and 23. Transfer on a Different Day and Recertification: If the transfer takes place on a different day from the date that the transferee/buyer signed Section A, the licensee must again check the photo identification of the transferee/buyer at the time of transfer.

Section D

Question 24-28. Firearm(s) Description: These blocks must be completed with the firearm(s) information. Firearms manufactured after 1968 by Federal firearms licensees should all be marked with a serial number. Should you acquire a firearm that is legally not marked with a serial number (i.e. pre-1968); you may answer question 26 with "NSN" (No Serial Number), "N/A" or "None."

If more than four firearms are involved in a transaction, the information required by Section D, questions 24-28, must be provided for the additional firearms on a separate sheet of paper, which must be attached to this ATF Form 4473.

Types of firearms include, but are not limited to: pistol, revolver, rifle, shotgun, receiver, frame and other firearms that are neither handguns nor long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell (pistol grip firearm) or NFA firearms (machinegun, silencer, short-barreled shotgun, short-barreled rifle, destructive device or "any other weapon").

Additional firearms purchases by the same transferee/buyer may not be added to the form after the transferor/seller has signed and dated it. A transferee/buyer who wishes to acquire additional firearms after the transferor/seller has signed and dated the form must complete a new ATF Form 4473 and undergo a new NICS check.

Question 31. This item is for the licensee's use in recording any information he/she finds necessary to conduct business.

Question 32. Check this box, or write "Private Party Transfer" in question 31, if the licensee is facilitating the sale or transfer of a firearm between private unlicensed individuals in accordance with ATF Procedure 2013-1. This will assist the licensee by documenting which transaction records correspond with private party transfers, and why there may be no corresponding A&D entries when the transfer did not proceed because it was denied, delayed, or cancelled.

Privacy Act Information

Solicitation of this information is authorized under 18 U.S.C. 923(g). Disclosure of this information by the transferee/buyer is mandatory for the transfer of a firearm. Disclosure of the individual's Social Security number is voluntary. The number may be used to verify the transferee's/buyer's identity.

For information about the routine uses of this form see System of Records Notice Justice/ATF-008, Regulatory Enforcement Records System (68 FR 163558, January 24, 2003).

Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive and possess firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. 922 and 923.

The estimated average burden associated with this collection is 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, IT Coordination Staff, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Confidentiality is not assured.



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington DC 20226

September 21, 2011

www.atf.gov

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received a number of inquiries regarding the use of marijuana for medicinal purposes¹ and its applicability to Federal firearms laws. The purpose of this open letter is to provide guidance on the issue and to assist you, a Federal firearms licensee, in complying with Federal firearms laws and regulations.

A number of States have passed legislation allowing under State law the use or possession of marijuana for medicinal purposes, and some of these States issue a card authorizing the holder to use or possess marijuana under State law. During a firearms transaction, a potential transferee may advise you that he or she is a user of medical marijuana, or present a medical marijuana card as identification or proof of residency.

As you know, Federal law, 18 U.S.C. § 922(g)(3), prohibits any person who 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))" from shipping, transporting, receiving or possessing firearms or ammunition. Marijuana is listed in the Controlled Substances Act as a Schedule I controlled substance, and there are no exceptions in Federal law for marijuana purportedly used for medicinal purposes, even if such use is sanctioned by State law. Further, Federal law, 18 U.S.C. § 922(d)(3), makes it unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or **having reasonable cause to believe** that such person is an unlawful user of or addicted to a controlled substance. As provided by 27 C.F.R. § 478.11, "an inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time."

Therefore, any person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by Federal law from possessing firearms or ammunition. Such persons should answer "yes" to question 11.e. on ATF Form 4473 (August 2008), Firearms Transaction Record, and you may not transfer firearms or ammunition to them. Further, if you are aware that the potential transferee is in possession of a card authorizing the possession and use of marijuana under State law, then you have "reasonable cause to believe" that the person is an unlawful user of a controlled substance. As such, you may not transfer firearms or ammunition to the person, even if the person answered "no" to question 11.e. on ATF Form 4473.

ATF is committed to assisting you in complying with Federal firearms laws. If you have any questions, please contact ATF's Firearms Industry Programs Branch at (202) 648-7190.

Arthur Herbert
Assistant Director
Enforcement Programs and Services

¹ The Federal government does not recognize marijuana as a medicine. The FDA has determined that marijuana has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks an accepted level of safety for use under medical supervision. See 66 Fed. Reg. 20052 (2001). This Open Letter will use the terms "medical use" or "for medical purposes" with the understanding that such use is not sanctioned by the federal agency charged with determining what substances are safe and effective as medicines.

DEFINITION OF "HANDGUN"

Section 10 of Pub. L. 99-408 provided that: "For purposes of section 921(a)(17)(B) of title 18, United States Code, as added by the first section of this Act, 'handgun' means any firearm including a pistol or revolver designed to be fired by the use of a single hand. The term also includes any combination of parts from which a handgun can be assembled."

§ 922. Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State,

except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless—

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;¹

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in

his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are _____

Signature _____ Date _____."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammuni-

¹ So in original. Probably should be followed with "and".

tion to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or 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 has been committed to any mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who² has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that 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, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) 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; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being trans-

ported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who 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) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who 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)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner

²So in original. The word "who" probably should not appear.

or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection—

(A) the term "firearm" does not include the frame or receiver of any such weapon;

(B) the term "major component" means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term "Security Exemplar" means an object, to be fabricated at the direction of the Attorney General, that is—

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors;

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not im-

pair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which—

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary³ the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provi-

sions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is—

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation

³So in original. Probably should be followed by "or".

under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless—

(A) after the most recent proposal of such transfer by the transferee—

(i) the transferor has—

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(i)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)(1) the transferee has presented to the transferor a permit that—

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)⁴) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

⁴ See References in Text note below.

(v) is not an alien who—

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term “chief law enforcement officer” means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(b)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B)(i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall—

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)(i) such other person has presented to the licensee a permit that—

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized

government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than \$5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

[(v), (w) Repealed. Pub. L. 103-322, title XI, §110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) PROVISIONS RELATING TO ALIENS ADMITTED UNDER NONIMMIGRANT VISAS.—

(1) DEFINITIONS.—In this subsection—

(A) the term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) EXCEPTIONS.—Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is—

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) WAIVER.—

(A) CONDITIONS FOR WAIVER.—Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if—

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) PETITION.—Each petition under subparagraph (B) shall—

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) APPROVAL OF PETITION.—The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner—

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) LIABILITY FOR USE.—

(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to

immunity from a qualified civil liability action.

(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

(C) DEFINED TERM.—As used in this paragraph, the term “qualified civil liability action”—

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

[APPENDIX A Repealed. Pub. L. 103-322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000]

(Added Pub. L. 90-351, title IV, § 902, June 19, 1968, 82 Stat. 228; amended Pub. L. 90-618, title I, § 102, Oct. 22, 1968, 82 Stat. 1216; Pub. L. 97-377, title I, § 165(a), Dec. 21, 1982, 96 Stat. 1923; Pub. L. 99-308, § 102, May 19, 1986, 100 Stat. 451; Pub. L. 99-408, § 2, Aug. 28, 1986, 100 Stat. 920; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-649, § 2(a), (f)(2)(A), Nov. 10, 1988, 102 Stat. 3816, 3818; Pub. L. 100-690, title VII, § 7060(c), Nov. 18, 1988, 102 Stat. 4404; Pub. L. 101-647, title XVII, § 1702(b)(1), title XXII, §§ 2201, 2202, 2204(b), title XXXV, § 3524, Nov. 29, 1990, 104 Stat. 4844, 4856, 4857, 4924; Pub. L. 103-159, title I, § 102(a)(1), (b), title III, § 302(a)-(c), Nov. 30, 1993, 107 Stat. 1536, 1539, 1545; Pub. L. 103-322, title XI, §§ 110102(a), 110103(a), 110105(2), 110106, 110201(a), 110401(b), (c), 110511, 110514, title XXXII, §§ 320904, 320927, title XXXIII, § 330011(i), Sept. 13, 1994, 108 Stat. 1996, 1998, 2000, 2010, 2014, 2019, 2125, 2131, 2145; Pub. L. 104-208, div. A, title I, § 101(f) [title VI, §§ 657, 658(b)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-369, 3009-372; Pub. L. 104-294, title VI, § 603(b), (c)(1), (d)-(f)(1), (g), Oct. 11, 1996, 110 Stat. 3503, 3504; Pub. L. 105-277, div. A, § 101(b) [title I, § 121], Oct. 21, 1998, 112 Stat. 2681-50, 2681-71; Pub. L. 107-273, div. B, title IV, § 4003(a)(1), Nov. 2, 2002, 116 Stat. 1811; Pub. L. 107-296, title XI, § 1112(f)(4), (6), Nov. 25, 2002, 116 Stat. 2276; Pub. L. 109-92, §§ 5(c)(1), 6(a), Oct. 26, 2005, 119 Stat. 2099, 2101.)

AMENDMENT OF SECTION

Pub. L. 100-649, § 2(f)(2)(A), Nov. 10, 1988, 102 Stat. 3818, as amended by Pub. L. 105-277, div. A, § 101(h) [title VI, § 649], Oct. 21, 1998, 112 Stat. 2681-480, 2681-528; Pub. L. 108-174, § 1(1), Dec. 9, 2003, 117 Stat. 2481, provided that, effective 25 years after the 30th day beginning after Nov. 10, 1988, subsection (p) of this section is repealed.

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(3), is December 16, 1968.

Section 5845 of the Internal Revenue Code of 1986, referred to in subsecs. (a)(4) and (b)(4), is classified to section 5845 of Title 26, Internal Revenue Code.

For date this subsection takes effect, referred to in subsec. (o)(2)(B), as May 19, 1986, see Effective Date of 1986 Amendment note, set out below.

The date of the enactment of this subsection and the date of the enactment of the Undetectable Firearms Act of 1988, referred to in subsec. (p)(2)(C)(i), (6), respectively, are both the date of enactment of Pub. L. 100-649, which enacted subsec. (p) of this section and which was approved Nov. 10, 1988.

The date of enactment of this subsection, referred to in subsec. (s)(1), is the date of enactment of Pub. L. 103-159, which was approved Nov. 30, 1993.

Section 5812 of the Internal Revenue Code of 1986, referred to in subsecs. (s)(1)(E) and (t)(3)(B), is classified to section 5812 of Title 26, Internal Revenue Code.

Section 1028 of this title, referred to in subsec. (s)(3)(A), was subsequently amended, and section 1028(d)(1) no longer defines the term “identification document”. However, such term is defined elsewhere in that section.

Section 102 of the Controlled Substances Act, referred to in subsec. (s)(3)(B)(iii), is classified to section 802 of Title 21, Food and Drugs.

Section 103 of the Brady Handgun Violence Prevention Act, referred to in subsec. (t)(1), is section 103 of Pub. L. 103-159, which is set out below.

AMENDMENTS

2005—Subsec. (a)(7), (8). Pub. L. 109-92, § 6(a), added pars. (7) and (8) and struck out former pars. (7) and (8) which related to prohibitions on the manufacture, importation, sale, and delivery of armor piercing ammunition.

Subsec. (z). Pub. L. 109-92, § 5(c)(1), added subsec. (z).

2002—Subsecs. (a) to (c), (p)(2) to (4). Pub. L. 107-296, § 1112(f)(6), substituted “Attorney General” for “Secretary” wherever appearing.

Subsec. (p)(5)(A). Pub. L. 107-296, § 1112(f)(4), substituted “after consultation with the Attorney General” for “after consultation with the Secretary”.

Subsecs. (r), (s). Pub. L. 107-296, § 1112(f)(6), substituted “Attorney General” for “Secretary” wherever appearing.

Subsec. (t)(1)(C). Pub. L. 107-273 substituted “1028(d)” for “1028(d)(1)”.

Subsecs. (t)(3), (5), (v), (w). Pub. L. 107-296, § 1112(f)(6), substituted “Attorney General” for “Secretary” wherever appearing.

1998—Subsec. (d)(5). Pub. L. 105-277, § 101(b) [title I, § 121(1)], added par. (5) and struck out former par. (5) which read as follows: “who, being an alien, is illegally or unlawfully in the United States;”.

Subsec. (g)(5). Pub. L. 105-277, § 101(b) [title I, § 121(2)], added par. (5) and struck out former par. (5) which read as follows: “who, being an alien, is illegally or unlawfully in the United States;”.

Subsec. (s)(3)(B)(v). Pub. L. 105-277, § 101(b) [title I, § 121(3)], added cl. (v) and struck out former cl. (v) which read as follows: “is not an alien who is illegally or unlawfully in the United States;”.

Subsec. (y). Pub. L. 105-277, § 101(b) [title I, § 121(4)], added subsec. (y).

1998—Pub. L. 104-294, § 603(g), amended Appendix A by substituting “Uberti 1866 Sporting Rifle” for “Uberti 1866 Sporting Rifle” in category designated “Centerfire Rifles—Lever & Slide”, “Sako FiberGlass Sporter” for “Sako FiberGlass Sporter” in category designated “Centerfire Rifles—Bolt Action”, “Remington 870 SPS Special Purpose Magnum” for “Remington 879 SPS Special Purpose Magnum” in category designated “Shotguns—Slide Actions”, and “E.A.A./Sabatti Falcon-Mon Over/Under” for “E.A.A./Sabatti Falcon-Mon Over/Under” in category designated “Shotguns—Over/Under”.

Subsec. (d)(9). Pub. L. 104-208, § 101(f) [§ 658(b)(1)], added par. (9).

Subsec. (g)(7). Pub. L. 104-208, § 101(f) [§ 658(b)(2)(A)], struck out “or” at end.

Subsec. (g)(8)(C)(i). Pub. L. 104-294, § 603(b), which directed the amendment of cl. (1) by substituting a semicolon for the comma at end, could not be executed because of the prior amendment by Pub. L. 104-208, § 101(f) [§ 658(b)(2)]. See below.

Pub. L. 104-208, § 101(f) [§ 658(b)(2)(B)], substituted “; or” for comma at end.

Subsec. (g)(9). Pub. L. 104-208, § 101(f) [§ 658(b)(2)(C)], added par. (9).

Subsec. (q). Pub. L. 104-208, § 101(f) [title VI, § 657], amended subsec. generally, revising and restating former provisions.

Subsec. (s)(1). Pub. L. 104-294, § 603(c)(1), amended directory language of Pub. L. 103-322, § 320927. See 1994 Amendment note below.

Subsec. (s)(3)(B)(i). Pub. L. 104-208, § 101(f) [title VI, § 658(b)(3)], inserted “, and has not been convicted in any court of a misdemeanor or crime of domestic violence” before the semicolon.

Subsec. (t)(2). Pub. L. 104-294, § 603(d), substituted “subsection (g) or (n)” for “section 922(g) or (n)” in introductory provisions.

Subsec. (w)(4). Pub. L. 104-294, § 603(e), substituted “section 923(i) of this title” for “section 923(i) of title 18, United States Code.”

Subsec. (x). Pub. L. 104-294, § 603(f)(1), amended directory language of Pub. L. 103-322, § 110201(a). See 1994 Amendment note below.

1994—Pub. L. 103-322, § 110106, which added Appendix A specifying firearms that were not prohibited by subsec. (v)(1) at end of section, was repealed by Pub. L. 103-322, § 110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(9). Pub. L. 103-322, § 110514, added par. (9).

Subsec. (b)(1). Pub. L. 103-322, § 330011(i), amended directory language of Pub. L. 101-647, § 3524. See 1990 Amendment note below.

Subsec. (d)(8). Pub. L. 103-322, § 110401(b), added par. (8).

Subsec. (g)(8). Pub. L. 103-322, § 110401(c), added par. (8).

Subsec. (j). Pub. L. 103-322, § 110511, amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: “It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.”

Subsec. (q). Pub. L. 103-322, § 320904, added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively.

Subsec. (s)(1). Pub. L. 103-322, § 320927, as amended by Pub. L. 104-294, § 603(c)(1), inserted “(other than the return of a handgun to the person from whom it was received)” after “handgun” in introductory provisions.

Subsec. (v). Pub. L. 103-322, § 110102(a), which added subsec. (v) prohibiting the manufacture, transfer, or possession of automatic assault weapons, was repealed by Pub. L. 103-322, § 110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (w). Pub. L. 103-322, § 110103(a), which added subsec. (w) prohibiting the transfer or possession of a large capacity ammunition feeding device, was repealed by Pub. L. 103-322, § 110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (x). Pub. L. 103-322, § 110201(a), as amended by Pub. L. 104-294, § 603(f)(1), added subsec. (x).

1993—Subsec. (e). Pub. L. 103-159, § 302(a), inserted at end “No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.”

Subsec. (f). Pub. L. 103-159, § 302(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (s). Pub. L. 103-159, § 102(a)(1), added subsec. (s).

Subsec. (t). Pub. L. 103-159, § 102(b), added subsec. (t).

Subsec. (u). Pub. L. 103-159, § 302(c), added subsec. (u). 1990—Subsec. (a)(5). Pub. L. 101-647, § 2201, substituted “does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides;” for “resides in any State other than that in which the transferor resides (or other than that in which its place of business is located if the transferor is a corporation or other business entity);”.

Subsec. (b)(1). Pub. L. 101-647, § 3524, as amended by Pub. L. 103-322, § 330011(i), substituted semicolon for period at end.

Subsec. (j). Pub. L. 101-647, § 2202(a), substituted “which constitutes, or which has been shipped or transported in” for “or which constitutes”.

Subsec. (k). Pub. L. 101-647, § 2202(b), inserted before period at end “or to possess or receive any firearm which has had the importer’s or manufacturer’s serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce”.

Subsec. (q). Pub. L. 101-647, § 1702(b)(1), added subsec. (q).

Subsec. (r). Pub. L. 101-647, § 2204(b), added subsec. (r). 1988—Subsec. (g)(3). Pub. L. 100-690 inserted “who” before “is”.

Subsec. (p). Pub. L. 100-649 added subsec. (p).

1986—Subsec. (a)(1). Pub. L. 99-308, § 102(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce;”

Subsec. (a)(2). Pub. L. 99-308, § 102(2)(A), in provision preceding subpar. (A) struck out “or ammunition” after “any firearm”.

Subsec. (a)(2)(A). Pub. L. 99-308, § 102(2)(B), substituted “licensed dealer, or licensed collector” for “or licensed dealer for the sole purpose of repair or customizing”.

Subsec. (a)(3)(B). Pub. L. 99-308, § 102(3), substituted “firearm” for “rifle or shotgun” and “with subsection (b)(3) of this section” for “with the provisions of subsection (b)(3) of this section”.

Subsec. (a)(4). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (a)(7), (8). Pub. L. 99-408 added pars. (7) and (8).

Subsec. (b)(2). Pub. L. 99-308, § 102(4)(A), struck out “or ammunition” after “firearm” in two places.

Subsec. (b)(3)(A). Pub. L. 99-308, § 102(4)(B), inserted a new cl. (A) and struck out former cl. (A) which provided that par. (3) “shall not apply to the sale or delivery of a rifle or shotgun to a resident of a State contiguous to the State in which the licensee’s place of business is located if the purchaser’s State of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale, or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) applicable to intrastate transactions other than at the licensee’s business premises.”

Subsec. (b)(3)(B), (C). Pub. L. 99-308, § 102(4)(C), (D), inserted “and” before “(B)” and struck out cl. (C), which provided that par. (3) “shall not preclude any person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if such person presents to such dealer a sworn statement (1) that his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other

State, and (ii) identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail".

Subsec. (b)(4). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (b)(5). Pub. L. 99-308, §102(4)(E), substituted "or armor-piercing ammunition" for "or ammunition except .22 caliber rimfire ammunition".

Subsec. (d). Pub. L. 99-308, §102(5)(A), substituted "person" for "licensed importer, licensed manufacturer, licensed dealer, or licensed collector" in provision preceding par. (1).

Subsec. (d)(3). Pub. L. 99-308, §102(5)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or".

Subsec. (d)(5) to (7). Pub. L. 99-308, §102(5)(C), (D), added pars. (5) to (7).

Subsec. (g). Pub. L. 99-308, §102(6)(D), in concluding provision substituted "in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce" for "any firearm or ammunition in interstate or foreign commerce".

Subsec. (g)(1). Pub. L. 99-308, §102(6)(A), struck out "is under indictment for, or who" after "who".

Subsec. (g)(3). Pub. L. 99-308, §102(6)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or".

Subsec. (g)(5) to (7). Pub. L. 99-308, §102(6)(C), added pars. (5) to (7).

Subsec. (h). Pub. L. 99-308, §102(7), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: "It shall be unlawful for any person—

"(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(2) who is a fugitive from justice;

"(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

"(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

Subsec. (n). Pub. L. 99-308, §102(8), added subsec. (n).

Subsec. (o). Pub. L. 99-308, §102(9), added subsec. (o).

1982—Subsec. (b)(5). Pub. L. 97-377 inserted "except .22 caliber rimfire ammunition" after "or ammunition".

1968—Subsec. (a)(1). Pub. L. 90-618 reenacted par. (1) without change.

Subsec. (a)(2). Pub. L. 90-618 added licensed collectors to the enumerated list of licensees subject to the provisions of this chapter, struck out exemption for the shipment or transportation in interstate or foreign commerce for rifles or shotguns, and inserted exemption authorizing an individual to mail a lawfully owned firearm to the specified licensees for the sole purpose of repair or customizing.

Subsec. (a)(3). Pub. L. 90-618 added licensed collectors to the enumerated list of licensees, struck out exemption for shotguns or rifles purchased or otherwise obtained outside the state of residence of the recipient, struck out provision making it unlawful for any person to purchase or otherwise obtain outside his state of residence any firearm which it would be unlawful for him

to purchase or possess in that state, and provided for exemptions when any person outside of his state of residence acquires a firearm by bequest or interstate succession and transports the firearm or otherwise receives it in his state of residence, if it is lawful for such person to purchase or possess such firearm in his state of residence, when a rifle or shotgun is obtained in conformity with the provisions of subsec. (b)(3) of this section, and when any firearm has been acquired in any state prior to the effective date of this chapter.

Subsec. (a)(4). Pub. L. 90-618 added licensed collectors to the enumerated list of licensees, and provided that the transporting of the specified articles be authorized by the Secretary when consistent with public safety and necessity.

Subsec. (a)(5). Pub. L. 90-618 added licensed collectors to the enumerated list of exempted licensees, prohibited the transfer, etc., of any firearm when the transferor has reasonable cause to believe that the transferee resides in a State other than that in which the transferor resides, and substituted provisions which exempted the transfer, transportation, or delivery of firearms incident to a bequest or intestate succession and the loan or rental of firearms to any person for temporary use for lawful sporting purposes for provisions which exempted the transfer of shotguns or rifles and prohibited the transfer, etc., of any firearm which the transferee could not lawfully purchase or possess in accord with the applicable laws, regulations or ordinances of the state or political subdivision in which the transferee resides.

Subsec. (a)(6). Pub. L. 90-618 added licensed collectors to the enumerated list of licensees, and extended the provisions to include the acquisition or attempted acquisition of ammunition.

Subsec. (b). Pub. L. 90-618, in provision preceding par. (1), added licensed collectors to the enumerated list of licensees.

Subsec. (b)(1). Pub. L. 90-618 substituted provisions making it unlawful to sell or deliver any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than 18, and to sell or deliver any firearm, other than a rifle or shotgun, or ammunition, other than ammunition for a rifle or shotgun, to any individual who the licensee knows or has reasonable cause to believe is less than 21, for provisions making it unlawful to sell or deliver any firearm to any individual who the licensee knows or has reasonable cause to believe is less than 21, if the firearm is other than a shotgun or rifle.

Subsec. (b)(2). Pub. L. 90-618 extended the prohibition to include the sale or delivery of ammunition to any person where the purchase or possession by such person of such ammunition would be unlawful, and struck out "or in the locality in which such person resides" after "or other disposition".

Subsec. (b)(3). Pub. L. 90-618 inserted the exemptions to the prohibition against the sale or delivery of any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in the state in which the licensee's place of business is located.

Subsec. (b)(4). Pub. L. 90-618 substituted provisions making it unlawful to sell or deliver any of the specified articles, except as specifically authorized by the Secretary as consistent with public safety and necessity, for provisions making it unlawful to sell or deliver any of the specified articles, unless the transferor has obtained a sworn statement executed by the principal law enforcement officer of the locality in which the transferee resides stating that such person's receipt or possession would not be unlawful, and that the receipt or possession is intended for lawful purposes, with such sworn statement to be retained by the licensee as part of the records required to be kept under this chapter.

Subsec. (b)(5). Pub. L. 90-618 extended the prohibition to include the sale or delivery of ammunition and, in the material following subsec. (b)(5), added licensed collectors to the enumerated list of licensees, and the provision that subsec. (b)(4) shall not apply to a sale or delivery to any research organization designated by the Secretary.

Subsecs. (c), (d). Pub. L. 90-618 added subsec. (c), redesignated former subsec. (c) as (d), added licensed collectors to the enumerated list of licensees, extended the prohibition against disposal of firearms or ammunition to include the disposal by any person who is an unlawful user of or addicted to marihuana or any depressant, stimulant, or narcotic drug, or any person who has been adjudicated a mental defective or has been committed to any mental institution, and inserted "or ammunition" after "the sale or disposition of a firearm". Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 90-618 added subsec. (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 90-618 redesignated former subsec. (d) as (f) and extended the prohibition against transportation or delivery to include ammunition. Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 90-618 redesignated former subsec. (e) as (g) and extended the prohibition against the shipment or transportation of firearms or ammunition to include the shipment or transportation by any persons who is an unlawful user of or addicted to marihuana or any depressant, stimulant, or narcotic drug, or any person who has been adjudicated a mental defective or has been committed to a mental institution. Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 90-618 redesignated former subsec. (f) as (h) and extended the prohibition against the receipt of any firearms or ammunition to include the receipt by any person who is an unlawful user of or addicted to marihuana or any depressant, stimulant, or narcotic drug, or any person who has been adjudicated a mental defective or has been committed to any mental institution. Former subsec. (h) redesignated (j).

Subsec. (i). Pub. L. 90-618 redesignated former subsec. (g) as (i) and substituted "that the firearm or ammunition was" for "the same to have been". Former subsec. (i) redesignated (k).

Subsec. (j). Pub. L. 90-618 redesignated former subsec. (h) as (j) and substituted "which is moving as, which is a part of," for "moving as or which is a part of" and "that the firearm or ammunition was" for "the same to have been". Former subsec. (j) redesignated (l).

Subsec. (k). Pub. L. 90-618 redesignated former subsec. (i) as (k). Former subsec. (k) redesignated (m).

Subsec. (l). Pub. L. 90-618 redesignated former subsec. (j) as (l).

Subsec. (m). Pub. L. 90-618 redesignated former subsec. (k) as (m) and added licensed collectors to the enumerated list of licensees.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.

Post Office Department, referred to in subsec. (c)(2), redesignated United States Postal Service pursuant to Pub. L. 91-375, §6(o), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-92, §5(d), Oct. 26, 2005, 119 Stat. 2101, provided that: "This section [amending this section and section 924 of this title and enacting provisions set out as notes under this section and section 921 of this title] and the amendments made by this section shall take effect 180 days after the date of enactment of this Act [Oct. 26, 2005]."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as

an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 603(c)(2) of Pub. L. 104-294 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if the amendment had been included in section 320927 of the Act referred to in paragraph (1) [Pub. L. 103-322] on the date of the enactment of such Act [Sept. 13, 1994]."

Section 603(f)(2) of Pub. L. 104-294 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if the amendment had been included in section 110201 of the Act referred to in paragraph (1) [Pub. L. 103-322] on the date of the enactment of such Act [Sept. 13, 1994]."

Section 603(i)(2) of Pub. L. 104-294 provided that: "The amendment made by paragraph (1) [amending section 210603(b) of Pub. L. 103-322, which amended sections 103(k) and 106(b)(2) of Pub. L. 103-159, set out as notes below] shall take effect as if the amendment had been included in section 210603(b) of the Act referred to in paragraph (1) [Pub. L. 103-322] on the date of the enactment of such Act [Sept. 13, 1994]."

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Amendment by sections 110102(a), 110103(a), and 110106 of Pub. L. 103-322 repealed 10 years after Sept. 13, 1994, see section 110105(2) of Pub. L. 103-322, formerly set out as a note under section 921 of this title.

Section 330011(i) of Pub. L. 103-322 provided that the amendment made by that section is effective as of the date on which section 3524 of Pub. L. 101-647 took effect.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 1702(b)(1) of Pub. L. 101-647 applicable to conduct engaged in after the end of the 60-day period beginning on Nov. 29, 1990, see section 1702(b)(4) of Pub. L. 101-647, set out as a note under section 921 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT; SUNSET PROVISION

Pub. L. 100-649, §2(f), Nov. 10, 1988, 102 Stat. 3818, as amended by Pub. L. 101-647, title XXXV, §3526(b), Nov. 29, 1990, 104 Stat. 4924; Pub. L. 105-277, div. A, §101(h) [title VI, §649], Oct. 21, 1998, 112 Stat. 2681-480, 2681-526; Pub. L. 108-174, §1, Dec. 9, 2003, 117 Stat. 2481, provided that:

"(1) **EFFECTIVE DATE.**—This Act and the amendments made by this Act [amending this section and sections 924 and 925 of this title and enacting provisions set out as notes under this section, section 921 of this title, and section 1356 of former Title 49, Transportation] shall take effect on the 30th day beginning after the date of the enactment of this Act [Nov. 10, 1988].

"(2) **Sunset.**—Effective 25 years after the effective date of this Act—

"(A) subsection (p) of section 922 of title 18, United States Code, is hereby repealed;

"(B) subsection (f) of section 924 of such title is hereby repealed and subsections (g) through (o) of such section are hereby redesignated as subsections (f) through (n), respectively;

"(C) subsection (f) of section 925 of such title is hereby repealed;

"(D) section 924(a)(1) of such title is amended by striking 'this subsection, subsection (b), (c), or (f) of this section, or in section 929' and inserting 'this chapter'; and

"(E) section 925(a) of such title is amended—

"(i) in paragraph (1), by striking 'and provisions relating to firearms subject to the prohibitions of section 922(p)'; and

"(ii) in paragraph (2), by striking ', except for provisions relating to firearms subject to the prohibitions of section 922(p),'; and

"(iii) in each of paragraphs (3) and (4), by striking 'except for provisions relating to firearms subject to the prohibitions of section 922(p),'."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 102(1)–(8) of Pub. L. 99-308 effective 180 days after May 19, 1986, and amendment by section 102(9) of Pub. L. 99-308 effective May 19, 1986, see section 110(a), (c) of Pub. L. 99-308, set out as a note under section 921 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-618 effective Dec. 16, 1968, except subsec. (l) effective Oct. 22, 1968, see section 105 of Pub. L. 90-618, set out as a note under section 921 of this title.

PURPOSES

Pub. L. 109-92, §5(b), Oct. 26, 2005, 119 Stat. 2099, provided that: “The purposes of this section [amending this section and section 924 of this title and enacting provisions set out as notes under this section and section 921 of this title] are—

“(1) to promote the safe storage and use of handguns by consumers;

“(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

“(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.”

[For definition of “person” as used in section 5(b) of Pub. L. 109-92, set out above, see section 7903 of Title 15, Commerce and Trade.]

LIABILITY; EVIDENCE

Pub. L. 109-92, §5(c)(3), Oct. 26, 2005, 119 Stat. 2101, provided that:

“(A) LIABILITY.—Nothing in this section [amending this section and section 924 of this title and enacting provisions set out as notes under this section and section 921 of this title] shall be construed to—

“(i) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

“(ii) establish any standard of care.

“(B) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this subsection.

“(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.”

[For definition of “person” as used in section 5(c)(3) of Pub. L. 109-92, set out above, see section 7903 of Title 15, Commerce and Trade.]

CRIMINAL BACKGROUND CHECKS FOR PERSONS OFFERING FIREARM AS COLLATERAL

Pub. L. 112-55, div. B, title V, §511, Nov. 18, 2011, 125 Stat. 632, provided that: “Hereafter, none of the funds appropriated pursuant to this Act [div. B of Pub. L. 112-55, see Tables for classification] or any other provision of law may be used for—

“(1) the implementation of any tax or fee in connection with the implementation of subsection [sic] 922(t) of title 18, United States Code; and

“(2) any system to implement subsection [sic] 922(t) of title 18, United States Code, that does not require and result in the destruction of any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm no more than 24 hours after the system advises a Federal firearms licensee that possession or receipt of a firearm by the prospective transferee would not violate subsection (g) or (n)

of section 922 of title 18, United States Code, or State law.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106-58, title VI, §634, Sept. 29, 1999, 113 Stat. 473.

Pub. L. 105-277, div. A, §101(h) [title VI, §655], Oct. 21, 1998, 112 Stat. 2681-480, 2681-530.

AVAILABILITY OF VIOLENT CRIME REDUCTION TRUST FUND TO FUND ACTIVITIES AUTHORIZED BY BRADY HANDGUN VIOLENCE PREVENTION ACT AND NATIONAL CHILD PROTECTION ACT OF 1993

Pub. L. 103-322, title XXI, §210603(a), Sept. 13, 1994, 108 Stat. 2074, which provided that certain amounts authorized in sections 103(k) and 106(b)(2) of Pub. L. 103-159, set out below, and section 5119(b) of Title 42, The Public Health and Welfare, may be appropriated from the Violent Crime Reduction Trust Fund, was repealed by Pub. L. 109-162, title XI, §1154(b)(4), Jan. 5, 2006, 119 Stat. 3113.

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

Pub. L. 110-180, Jan. 8, 2008, 121 Stat. 2559, provided that:

“SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

“(a) SHORT TITLE [sic].—This Act may be cited as the ‘NICS Improvement Amendments Act of 2007’.

“(b) Table of Contents.—[Omitted.]

“SEC. 2. FINDINGS.

“Congress finds the following:

“(1) Approximately 916,000 individuals were prohibited from purchasing a firearm for failing a background check between November 30, 1998, (the date the National Instant Criminal Background Check System (NICS) began operating) and December 31, 2004.

“(2) From November 30, 1998, through December 31, 2004, nearly 49,000,000 Brady background checks were processed through NICS.

“(3) Although most Brady background checks are processed through NICS in seconds, many background checks are delayed if the Federal Bureau of Investigation (FBI) does not have automated access to complete information from the States concerning persons prohibited from possessing or receiving a firearm under Federal or State law.

“(4) Nearly 21,000,000 criminal records are not accessible by NICS and millions of criminal records are missing critical data, such as arrest dispositions, due to data backlogs.

“(5) The primary cause of delay in NICS background checks is the lack of—

“(A) updates and available State criminal disposition records; and

“(B) automated access to information concerning persons prohibited from possessing or receiving a firearm because of mental illness, restraining orders, or misdemeanor convictions for domestic violence.

“(6) Automated access to this information can be improved by—

“(A) computerizing information relating to criminal history, criminal dispositions, mental illness, restraining orders, and misdemeanor convictions for domestic violence; or

“(B) making such information available to NICS in a usable format.

“(7) Helping States to automate these records will reduce delays for law-abiding gun purchasers.

“(8) On March 12, 2002, the senseless shooting, which took the lives of a priest and a parishioner at the Our Lady of Peace Church in Lynbrook, New York, brought attention to the need to improve information-sharing that would enable Federal and State law enforcement agencies to conduct a complete back-

ground check on a potential firearm purchaser. The man who committed this double murder had a prior disqualifying mental health commitment and a restraining order against him, but passed a Brady background check because NICS did not have the necessary information to determine that he was ineligible to purchase a firearm under Federal or State law.

"(9) On April 16, 2007, a student with a history of mental illness at the Virginia Polytechnic Institute and State University shot to death 32 students and faculty members, wounded 17 more, and then took his own life. The shooting, the deadliest campus shooting in United States history, renewed the need to improve information-sharing that would enable Federal and State law enforcement agencies to conduct complete background checks on potential firearms purchasers. In spite of a proven history of mental illness, the shooter was able to purchase the two firearms used in the shooting. Improved coordination between State and Federal authorities could have ensured that the shooter's disqualifying mental health information was available to NICS.

"SEC. 3. DEFINITIONS.

"As used in this Act, the following definitions shall apply:

"(1) COURT ORDER.—The term 'court order' includes a court order (as described in section 922(g)(8) of title 18, United States Code).

"(2) MENTAL HEALTH TERMS.—The terms 'adjudicated as a mental defective' and 'committed to a mental institution' have the same meanings as in section 922(g)(4) of title 18, United States Code.

"(3) MISDEMEANOR CRIME OF DOMESTIC VIOLENCE.—The term 'misdemeanor crime of domestic violence' has the meaning given the term in section 921(a)(33) of title 18, United States Code.

"TITLE I—TRANSMITTAL OF RECORDS

"SEC. 101. ENHANCEMENT OF REQUIREMENT THAT FEDERAL DEPARTMENTS AND AGENCIES PROVIDE RELEVANT INFORMATION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

"(a) IN GENERAL.—[Amended section 103 of Pub. L. 103-159, set out below.]

"(b) PROVISION AND MAINTENANCE OF NICS RECORDS.—

"(1) DEPARTMENT OF HOMELAND SECURITY.—The Secretary of Homeland Security shall make available to the Attorney General—

"(A) records, updated not less than quarterly, which are relevant to a determination of whether a person is disqualified from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, United States Code, for use in background checks performed by the National Instant Criminal Background Check System; and

"(B) information regarding all the persons described in subparagraph (A) of this paragraph who have changed their status to a category not identified under section 922(g)(5) of title 18, United States Code, for removal, when applicable, from the National Instant Criminal Background Check System.

"(2) DEPARTMENT OF JUSTICE.—The Attorney General shall—

"(A) ensure that any information submitted to, or maintained by, the Attorney General under this section is kept accurate and confidential, as required by the laws, regulations, policies, or procedures governing the applicable record system;

"(B) provide for the timely removal and destruction of obsolete and erroneous names and information from the National Instant Criminal Background Check System; and

"(C) work with States to encourage the development of computer systems, which would permit electronic notification to the Attorney General when—

"(i) a court order has been issued, lifted, or otherwise removed by order of the court; or

"(ii) a person has been adjudicated as a mental defective or committed to a mental institution.

"(c) STANDARD FOR ADJUDICATIONS AND COMMITMENTS RELATED TO MENTAL HEALTH.—

"(1) IN GENERAL.—No department or agency of the Federal Government may provide to the Attorney General any record of an adjudication related to the mental health of a person or any commitment of a person to a mental institution if—

"(A) the adjudication or commitment, respectively, has been set aside or expunged, or the person has otherwise been fully released or discharged from all mandatory treatment, supervision, or monitoring;

"(B) the person has been found by a court, board, commission, or other lawful authority to no longer suffer from the mental health condition that was the basis of the adjudication or commitment, respectively, or has otherwise been found to be rehabilitated through any procedure available under law; or

"(C) the adjudication or commitment, respectively, is based solely on a medical finding of disability, without an opportunity for a hearing by a court, board, commission, or other lawful authority, and the person has not been adjudicated as a mental defective consistent with section 922(g)(4) of title 18, United States Code, except that nothing in this section or any other provision of law shall prevent a Federal department or agency from providing to the Attorney General any record demonstrating that a person was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

"(2) TREATMENT OF CERTAIN ADJUDICATIONS AND COMMITMENTS.—

"(A) PROGRAM FOR RELIEF FROM DISABILITIES.—

"(i) IN GENERAL.—Each department or agency of the United States that makes any adjudication related to the mental health of a person or imposes any commitment to a mental institution, as described in subsection (d)(4) and (g)(4) of section 922 of title 18, United States Code, shall establish, not later than 120 days after the date of enactment of this Act [Jan. 8, 2008], a program that permits such a person to apply for relief from the disabilities imposed by such subsections.

"(ii) PROCESS.—Each application for relief submitted under the program required by this subparagraph shall be processed not later than 365 days after the receipt of the application. If a Federal department or agency fails to resolve an application for relief within 365 days for any reason, including a lack of appropriated funds, the department or agency shall be deemed for all purposes to have denied such request for relief without cause. Judicial review of any petitions brought under this clause shall be de novo.

"(iii) JUDICIAL REVIEW.—Relief and judicial review with respect to the program required by this subparagraph shall be available according to the standards prescribed in section 925(c) of title 18, United States Code. If the denial of a petition for relief has been reversed after such judicial review, the court shall award the prevailing party, other than the United States, a reasonable attorney's fee for any and all proceedings in relation to attaining such relief, and the United States shall be liable for such fee. Such fee shall be based upon the prevailing rates awarded to public interest legal aid organizations in the relevant community.

"(B) RELIEF FROM DISABILITIES.—In the case of an adjudication related to the mental health of a person or a commitment of a person to a mental institution, a record of which may not be provided to the Attorney General under paragraph (1), including because of the absence of a finding described in

subparagraph (C) of such paragraph, or from which a person has been granted relief under a program established under subparagraph (A) or (B), or because of a removal of a record under section 103(e)(1)(D) of the Brady Handgun Violence Prevention Act [Pub. L. 103-159, set out below], the adjudication or commitment, respectively, shall be deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code. Any Federal agency that grants a person relief from disabilities under this subparagraph shall notify such person that the person is no longer prohibited under 922(d)(4) or 922(g)(4) of title 18, United States Code, on account of the relieved disability for which relief was granted pursuant to a proceeding conducted under this subparagraph, with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms.

“(3) NOTICE REQUIREMENT.—Effective 30 days after the date of enactment of this Act, any Federal department or agency that conducts proceedings to adjudicate a person as a mental defective under 922(d)(4) or 922(g)(4) of title 18, United States Code, shall provide both oral and written notice to the individual at the commencement of the adjudication process including—

“(A) notice that should the agency adjudicate the person as a mental defective, or should the person be committed to a mental institution, such adjudication, when final, or such commitment, will prohibit the individual from purchasing, possessing, receiving, shipping or transporting a firearm or ammunition under section 922(d)(4) or section 922(g)(4) of title 18, United States Code;

“(B) information about the penalties imposed for unlawful possession, receipt, shipment or transportation of a firearm under section 924(a)(2) of title 18, United States Code; and

“(C) information about the availability of relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms.

“(4) EFFECTIVE DATE.—Except for paragraph (3), this subsection shall apply to names and other information provided before, on, or after the date of enactment of this Act. Any name or information provided in violation of this subsection (other than in violation of paragraph (3)) before, on, or after such date shall be removed from the National Instant Criminal Background Check System.

“SEC. 102. REQUIREMENTS TO OBTAIN WAIVER.

“(a) IN GENERAL.—Beginning 3 years after the date of the enactment of this Act [Jan. 8, 2008], a State shall be eligible to receive a waiver of the 10 percent matching requirement for National Criminal History Improvement Grants under the Crime Identification Technology Act of 1988 [1998] (42 U.S.C. 14601 [et seq.]) if the State provides at least 90 percent of the information described in subsection (c). The length of such a waiver shall not exceed 2 years.

“(b) STATE ESTIMATES.—

“(1) INITIAL STATE ESTIMATE.—

“(A) IN GENERAL.—To assist the Attorney General in making a determination under subsection (a) of this section, and under section 104, concerning the compliance of the States in providing information to the Attorney General for the purpose of receiving a waiver under subsection (a) of this section, or facing a loss of funds under section 104, by a date not later than 180 days after the date of the enactment of this Act [Jan. 8, 2008], each State shall provide the Attorney General with a reasonable estimate, as calculated by a method determined by the Attorney General and in accordance with section 104(d), of the number of the records described in subparagraph (C) applicable to such State that concern persons who are prohibited from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, United States Code.

“(B) FAILURE TO PROVIDE INITIAL ESTIMATE.—A State that fails to provide an estimate described in subparagraph (A) by the date required under such subparagraph shall be ineligible to receive any funds under section 103, until such date as it provides such estimate to the Attorney General.

“(C) RECORD DEFINED.—For purposes of subparagraph (A), a record is the following:

“(i) A record that identifies a person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year.

“(ii) A record that identifies a person for whom an indictment has been returned for a crime punishable by imprisonment for a term exceeding 1 year that is valid under the laws of the State involved or who is a fugitive from justice, as of the date of the estimate, and for which a record of final disposition is not available.

“(iii) A record that identifies a person who is an unlawful user of, or addicted to a controlled substance (as such terms ‘unlawful user’ and ‘addicted’ are respectively defined in regulations implementing section 922(g)(3) of title 18, United States Code, as in effect on the date of the enactment of this Act) as demonstrated by arrests, convictions, and adjudications, and whose record is not protected from disclosure to the Attorney General under any provision of State or Federal law.

“(iv) A record that identifies a person who has been adjudicated as a mental defective or committed to a mental institution, consistent with section 922(g)(4) of title 18, United States Code, and whose record is not protected from disclosure to the Attorney General under any provision of State or Federal law.

“(v) A record that is electronically available and that identifies a person who, as of the date of such estimate, is subject to a court order described in section 922(g)(8) of title 18, United States Code.

“(vi) A record that is electronically available and that identifies a person convicted in any court of a misdemeanor crime of domestic violence, as defined in section 921(a)(33) of title 18, United States Code.

“(2) SCOPE.—The Attorney General, in determining the compliance of a State under this section or section 104 for the purpose of granting a waiver or imposing a loss of Federal funds, shall assess the total percentage of records provided by the State concerning any event occurring within the prior 20 years, which would disqualify a person from possessing a firearm under subsection (g) or (n) of section 922 of title 18, United States Code.

“(3) CLARIFICATION.—Notwithstanding paragraph (2), States shall endeavor to provide the National Instant Criminal Background Check System with all records concerning persons who are prohibited from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, United States Code, regardless of the elapsed time since the disqualifying event.

“(c) ELIGIBILITY OF STATE RECORDS FOR SUBMISSION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.—

“(1) REQUIREMENTS FOR ELIGIBILITY.—

“(A) IN GENERAL.—From the information collected by a State, the State shall make electronically available to the Attorney General records relevant to a determination of whether a person is disqualified from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, United States Code, or applicable State law.

“(B) NICS UPDATES.—The State, on being made aware that the basis under which a record was made available under subparagraph (A) does not apply, or no longer applies, shall, as soon as practicable—

“(i) update, correct, modify, or remove the record from any database that the Federal or

State government maintains and makes available to the National Instant Criminal Background Check System, consistent with the rules pertaining to that database; and

“(1) notify the Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.

The Attorney General upon receiving notice pursuant to clause (ii) shall ensure that the record in the National Instant Criminal Background Check System is updated, corrected, modified, or removed within 30 days of receipt.

“(C) CERTIFICATION.—To remain eligible for a waiver under subsection (a), a State shall certify to the Attorney General, not less than once during each 2-year period, that at least 90 percent of all records described in subparagraph (A) has been made electronically available to the Attorney General in accordance with subparagraph (A).

“(D) INCLUSION OF ALL RECORDS.—For purposes of this paragraph, a State shall identify and include all of the records described under subparagraph (A) without regard to the age of the record.

“(2) APPLICATION TO PERSONS CONVICTED OF MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE.—The State shall make available to the Attorney General, for use by the National Instant Criminal Background Check System, records relevant to a determination of whether a person has been convicted in any court of a misdemeanor crime of domestic violence. With respect to records relating to such crimes, the State shall provide information specifically describing the offense and the specific section or subsection of the offense for which the defendant has been convicted and the relationship of the defendant to the victim in each case.

“(3) APPLICATION TO PERSONS WHO HAVE BEEN ADJUDICATED AS A MENTAL DEFECTIVE OR COMMITTED TO A MENTAL INSTITUTION.—The State shall make available to the Attorney General, for use by the National Instant Criminal Background Check System, the name and other relevant identifying information of persons adjudicated as a mental defective or those committed to mental institutions to assist the Attorney General in enforcing section 922(g)(4) of title 18, United States Code.

“(d) PRIVACY PROTECTIONS.—For any information provided to the Attorney General for use by the National Instant Criminal Background Check System, relating to persons prohibited from possessing or receiving a firearm under section 922(g)(4) of title 18, United States Code, the Attorney General shall work with States and local law enforcement and the mental health community to establish regulations and protocols for protecting the privacy of information provided to the system. The Attorney General shall make every effort to meet with any mental health group seeking to express its views concerning these regulations and protocols and shall seek to develop regulations as expeditiously as practicable.

“(e) ATTORNEY GENERAL REPORT.—Not later than January 31 of each year, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of States in automating the databases containing the information described in subsection (b) and in making that information electronically available to the Attorney General pursuant to the requirements of subsection (c).

“SEC. 103. IMPLEMENTATION ASSISTANCE TO STATES.

“(a) AUTHORIZATION.—

“(1) IN GENERAL.—From amounts made available to carry out this section and subject to section 102(b)(1)(B), the Attorney General shall make grants to States and Indian tribal governments, in a manner consistent with the National Criminal History Improvement Program, which shall be used by the

States and Indian tribal governments, in conjunction with units of local government and State and local courts, to establish or upgrade information and identification technologies for firearms eligibility determinations. Not less than 3 percent, and no more than 10 percent of each grant under this paragraph shall be used to maintain the relief from disabilities program in accordance with section 105.

“(2) GRANTS TO INDIAN TRIBES.—Up to 5 percent of the grant funding available under this section may be reserved for Indian tribal governments, including tribal judicial systems.

“(b) USE OF GRANT AMOUNTS.—Grants awarded to States or Indian tribes under this section may only be used to—

“(1) create electronic systems, which provide accurate and up-to-date information which is directly related to checks under the National Instant Criminal Background Check System (referred to in this section as ‘NICS’), including court disposition and corrections records;

“(2) assist States in establishing or enhancing their own capacities to perform NICS background checks;

“(3) supply accurate and timely information to the Attorney General concerning final dispositions of criminal records to databases accessed by NICS;

“(4) supply accurate and timely information to the Attorney General concerning the identity of persons who are prohibited from obtaining a firearm under section 922(g)(4) of title 18, United States Code, to be used by the Federal Bureau of Investigation solely to conduct NICS background checks;

“(5) supply accurate and timely court orders and records of misdemeanor crimes of domestic violence for inclusion in Federal and State law enforcement databases used to conduct NICS background checks;

“(6) collect and analyze data needed to demonstrate levels of State compliance with this Act; and

“(7) maintain the relief from disabilities program in accordance with section 105, but not less than 3 percent, and no more than 10 percent of each grant shall be used for this purpose.

“(c) ELIGIBILITY.—To be eligible for a grant under this section, a State shall certify, to the satisfaction of the Attorney General, that the State has implemented a relief from disabilities program in accordance with section 105.

“(d) CONDITION.—As a condition of receiving a grant under this section, a State shall specify the projects for which grant amounts will be used, and shall use such amounts only as specified. A State that violates this subsection shall be liable to the Attorney General for the full amount of the grant received under this section.

“(e) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to carry out this section \$125,000,000 for fiscal year 2009, \$250,000,000 for fiscal year 2010, \$250,000,000 for fiscal year 2011, \$125,000,000 for fiscal year 2012, and \$125,000,000 for fiscal year 2013.

“(2) ALLOCATIONS.—For fiscal years 2009 and 2010, the Attorney General shall endeavor to allocate at least ½ of the authorized appropriations to those States providing more than 50 percent of the records required to be provided under sections 102 and 103. For fiscal years 2011, 2012, and 2013, the Attorney General shall endeavor to allocate at least ½ of the authorized appropriations to those States providing more than 70 percent of the records required to be provided under section 102 and 103. The allocations in this paragraph shall be subject to the discretion of the Attorney General, who shall have the authority to make adjustments to the distribution of the authorized appropriations as necessary to maximize incentives for State compliance.

“(f) USER FEE.—The Federal Bureau of Investigation shall not charge a user fee for background checks pursuant to section 922(t) of title 18, United States Code.

“SEC. 104. PENALTIES FOR NONCOMPLIANCE.

“(a) ATTORNEY GENERAL REPORT.—

“(1) IN GENERAL.—Not later than January 31 of each year, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of the States in automating the databases containing information described under sections 102 and 103, and in providing that information pursuant to the requirements of sections 102 and 103.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice, such funds as may be necessary to carry out paragraph (1).

“(b) PENALTIES.—

“(1) DISCRETIONARY REDUCTION.—

“(A) During the 2-year period beginning 3 years after the date of enactment of this Act [Jan. 8, 2008], the Attorney General may withhold not more than 3 percent of the amount that would otherwise be allocated to a State under section 505 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3755) if the State provides less than 50 percent of the records required to be provided under sections 102 and 103.

“(B) During the 5-year period after the expiration of the period referred to in subparagraph (A), the Attorney General may withhold not more than 4 percent of the amount that would otherwise be allocated to a State under section 505 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3755) if the State provides less than 70 percent of the records required to be provided under sections 102 and 103.

“(2) MANDATORY REDUCTION.—After the expiration of the periods referred to in paragraph (1), the Attorney General shall withhold 5 percent of the amount that would otherwise be allocated to a State under section 505 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3755), if the State provides less than 90 percent of the records required to be provided under sections 102 and 103.

“(3) WAIVER BY ATTORNEY GENERAL.—The Attorney General may waive the applicability of paragraph (2) to a State if the State provides substantial evidence, as determined by the Attorney General, that the State is making a reasonable effort to comply with the requirements of sections 102 and 103, including an inability to comply due to court order or other legal restriction.

“(c) REALLOCATION.—Any funds that are not allocated to a State because of the failure of the State to comply with the requirements of this Act shall be reallocated to States that meet such requirements.

“(d) METHODOLOGY.—The method established to calculate the number of records to be reported, as set forth in section 102(b)(1)(A), and State compliance with the required level of reporting under sections 102 and 103 shall be determined by the Attorney General. The Attorney General shall calculate the methodology based on the total number of records to be reported from all subcategories of records, as described in section 102(b)(1)(C).

“SEC. 105. RELIEF FROM DISABILITIES PROGRAM REQUIRED AS CONDITION FOR PARTICIPATION IN GRANT PROGRAMS.

“(a) PROGRAM DESCRIBED.—A relief from disabilities program is implemented by a State in accordance with this section if the program—

“(1) permits a person who, pursuant to State law, has been adjudicated as described in subsection (g)(4) of section 922 of title 18, United States Code, or has been committed to a mental institution, to apply to the State for relief from the disabilities imposed by subsections (d)(4) and (g)(4) of such section by reason of the adjudication or commitment;

“(2) provides that a State court, board, commission, or other lawful authority shall grant the relief, pursuant to State law and in accordance with the principles of due process, if the circumstances regarding

the disabilities referred to in paragraph (1), and the person's record and reputation, are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest; and

“(3) permits a person whose application for the relief is denied to file a petition with the State court of appropriate jurisdiction for a de novo judicial review of the denial.

“(b) AUTHORITY TO PROVIDE RELIEF FROM CERTAIN DISABILITIES WITH RESPECT TO FIREARMS.—If, under a State relief from disabilities program implemented in accordance with this section, an application for relief referred to in subsection (a)(1) of this section is granted with respect to an adjudication or a commitment to a mental institution or based upon a removal of a record under section 102(c)(1)(B), the adjudication or commitment, as the case may be, is deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code.

“SEC. 106. ILLEGAL IMMIGRANT GUN PURCHASE NOTIFICATION.

“(a) IN GENERAL.—Notwithstanding any other provision of law or of this Act, all records obtained by the National Instant Criminal Background Check system relevant to whether an individual is prohibited from possessing a firearm because such person is an alien illegally or unlawfully in the United States shall be made available to U.S. Immigration and Customs Enforcement.

“(b) REGULATIONS.—The Attorney General, at his or her discretion, shall promulgate guidelines relevant to what records relevant to illegal aliens shall be provided pursuant to the provisions of this Act.

“TITLE II—FOCUSING FEDERAL ASSISTANCE ON THE IMPROVEMENT OF RELEVANT RECORDS

“SEC. 201. CONTINUING EVALUATIONS.

“(a) EVALUATION REQUIRED.—The Director of the Bureau of Justice Statistics (referred to in this section as the ‘Director’) shall study and evaluate the operations of the National Instant Criminal Background Check System. Such study and evaluation shall include compilations and analyses of the operations and record systems of the agencies and organizations necessary to support such System.

“(b) REPORT ON GRANTS.—Not later than January 31 of each year, the Director shall submit to Congress a report containing the estimates submitted by the States under section 102(b).

“(c) REPORT ON BEST PRACTICES.—Not later than January 31 of each year, the Director shall submit to Congress, and to each State participating in the National Criminal History Improvement Program, a report of the practices of the States regarding the collection, maintenance, automation, and transmittal of information relevant to determining whether a person is prohibited from possessing or receiving a firearm by Federal or State law, by the State or any other agency, or any other records relevant to the National Instant Criminal Background Check System, that the Director considers to be best practices.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2013 to complete the studies, evaluations, and reports required under this section.

“TITLE III—GRANTS TO STATE COURT SYSTEMS FOR THE IMPROVEMENT IN AUTOMATION AND TRANSMITTAL OF DISPOSITION RECORDS

“SEC. 301. DISPOSITION RECORDS AUTOMATION AND TRANSMITTAL IMPROVEMENT GRANTS.

“(a) GRANTS AUTHORIZED.—From amounts made available to carry out this section, the Attorney General shall make grants to each State, consistent with State plans for the integration, automation, and accessibility of criminal history records, for use by the State

court system to improve the automation and transmittal of criminal history dispositions, records relevant to determining whether a person has been convicted of a misdemeanor crime of domestic violence, court orders, and mental health adjudications or commitments, to Federal and State record repositories in accordance with sections 102 and 103 and the National Criminal History Improvement Program.

“(b) GRANTS TO INDIAN TRIBES.—Up to 5 percent of the grant funding available under this section may be reserved for Indian tribal governments for use by Indian tribal judicial systems.

“(c) USE OF FUNDS.—Amounts granted under this section shall be used by the State court system only—

“(1) to carry out, as necessary, assessments of the capabilities of the courts of the State for the automation and transmission of arrest and conviction records, court orders, and mental health adjudications or commitments to Federal and State record repositories; and

“(2) to implement policies, systems, and procedures for the automation and transmission of arrest and conviction records, court orders, and mental health adjudications or commitments to Federal and State record repositories.

“(d) ELIGIBILITY.—To be eligible to receive a grant under this section, a State shall certify, to the satisfaction of the Attorney General, that the State has implemented a relief from disabilities program in accordance with section 105.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General to carry out this section \$62,500,000 for fiscal year 2009, \$125,000,000 for fiscal year 2010, \$125,000,000 for fiscal year 2011, \$62,500,000 for fiscal year 2012, and \$62,500,000 for fiscal year 2013.

“TITLE IV—GAO AUDIT

“SEC. 401. GAO AUDIT.

“(a) IN GENERAL.—The Comptroller General of the United States shall conduct an audit of the expenditure of all funds appropriated for criminal records improvement pursuant to section 106(b) of the Brady Handgun Violence Prevention Act (Public Law 103-159) [set out below] to determine if the funds were expended for the purposes authorized by the Act and how those funds were expended for those purposes or were otherwise expended.

“(b) REPORT.—Not later than 6 months after the date of enactment of this Act [Jan. 8, 2008], the Comptroller General shall submit a report to Congress describing the findings of the audit conducted pursuant to subsection (a).”

Pub. L. 103-159, title I, § 103, Nov. 30, 1993, 107 Stat. 1541, as amended by Pub. L. 103-322, title XXI, § 210603(b), Sept. 13, 1994, 108 Stat. 2074; Pub. L. 104-294, title VI, § 603(h), (i)(1), Oct. 11, 1996, 110 Stat. 3504; Pub. L. 110-180, title I, § 101(a), Jan. 8, 2008, 121 Stat. 2561, provided that:

“(a) DETERMINATION OF TIMETABLES.—Not later than 6 months after the date of enactment of this Act [Nov. 30, 1993], the Attorney General shall—

“(1) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems and the telephone or electronic device of licensees will communicate with the national system;

“(2) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on-line capacity basis to the national system; and

“(3) notify each State of the determinations made pursuant to paragraphs (1) and (2).

“(b) ESTABLISHMENT OF SYSTEM.—Not later than 60 months after the date of the enactment of this Act [Nov. 30, 1993], the Attorney General shall establish a national instant criminal background check system

that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18, United States Code, or State law.

“(c) EXPEDITED ACTION BY THE ATTORNEY GENERAL.—The Attorney General shall expedite—

“(1) the upgrading and indexing of State criminal history records in the Federal criminal records system maintained by the Federal Bureau of Investigation;

“(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

“(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

“(d) NOTIFICATION OF LICENSEES.—On establishment of the system under this section, the Attorney General shall notify each licensee and the chief law enforcement officer of each State of the existence and purpose of the system and the means to be used to contact the system.

“(e) ADMINISTRATIVE PROVISIONS.—

“(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION.—

“(A) IN GENERAL.—Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law, as is necessary to enable the system to operate in accordance with this section.

“(B) REQUEST OF ATTORNEY GENERAL.—On request of the Attorney General, the head of such department or agency shall furnish electronic versions of the information described under subparagraph (A) to the system.

“(C) QUARTERLY SUBMISSION TO ATTORNEY GENERAL.—If a Federal department or agency under subparagraph (A) has any record of any person demonstrating that the person falls within one of the categories described in subsection (g) or (n) of section 922 of title 18, United States Code, the head of such department or agency shall, not less frequently than quarterly, provide the pertinent information contained in such record to the Attorney General.

“(D) INFORMATION UPDATES.—The Federal department or agency, on being made aware that the basis under which a record was made available under subparagraph (A) does not apply, or no longer applies, shall—

“(i) update, correct, modify, or remove the record from any database that the agency maintains and makes available to the Attorney General, in accordance with the rules pertaining to that database; and

“(ii) notify the Attorney General that such basis no longer applies so that the National Instant Criminal Background Check System is kept up to date.

The Attorney General upon receiving notice pursuant to clause (ii) shall ensure that the record in the National Instant Criminal Background Check System is updated, corrected, modified, or removed within 30 days of receipt.

“(E) ANNUAL REPORT.—The Attorney General shall submit an annual report to Congress that describes the compliance of each department or agency with the provisions of this paragraph.

“(2) OTHER AUTHORITY.—The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

"(f) WRITTEN REASONS PROVIDED ON REQUEST.—If the national instant criminal background check system determines that an individual is ineligible to receive a firearm and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

"(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION.—If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

"(h) REGULATIONS.—After 90 days' notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

"(i) PROHIBITION RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS.—No department, agency, officer, or employee of the United States may—

"(1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

"(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited by section 922(g) or (n) of title 18, United States Code, or State law, from receiving a firearm.

"(j) DEFINITIONS.—As used in this section:

"(1) LICENSEE.—The term 'licensee' means a licensed importer (as defined in section 921(a)(9) of title 18, United States Code), a licensed manufacturer (as defined in section 921(a)(10) of that title), or a licensed dealer (as defined in section 921(a)(11) of that title).

"(2) OTHER TERMS.—The terms 'firearm', 'handgun', 'licensed importer', 'licensed manufacturer', and 'licensed dealer' have the meanings stated in section 921(a) of title 18, United States Code, as amended by subsection (a)(2).

"(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to enable the Attorney General to carry out this section."

FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS

Section 106(b) of Pub. L. 103-159, as amended by Pub. L. 103-322, title XXI, §210603(b), Sept. 13, 1994, 103 Stat. 2074; Pub. L. 104-294, title VI, §603(f)(1), Oct. 11, 1996, 110 Stat. 3504, provided that:

"(1) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS.—The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that as of the date of enactment of this Act [Nov. 30, 1993] have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

"(A) for the creation of a computerized criminal history record system or improvement of an existing system;

"(B) to improve accessibility to the national instant criminal background system; and

"(C) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under paragraph (1) a total of \$200,000,000 for fiscal year 1994 and all fiscal years thereafter."

GUN-FREE ZONE SIGNS

Section 1702(b)(5) of Pub. L. 101-647 provided that: "Federal, State, and local authorities are encouraged to cause signs to be posted around school zones giving warning of prohibition of the possession of firearms in a school zone."

IDENTIFICATION OF FELONS AND OTHER PERSONS INELIGIBLE TO PURCHASE HANDGUNS

Section 6213 of Pub. L. 100-690 provided that:

"(a) IDENTIFICATION OF FELONS INELIGIBLE TO PURCHASE HANDGUNS.—The Attorney General shall develop a system for immediate and accurate identification of felons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The system shall be accessible to dealers but only for the purpose of determining whether a potential purchaser is a convicted felon. The Attorney General shall establish a plan (including a cost analysis of the proposed system) for implementation of the system. In developing the system, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. The Attorney General shall begin implementation of the system 30 days after the report to the Congress as provided in subsection (b).

"(b) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act [Nov. 18, 1988], the Attorney General shall report to the Congress a description of the system referred to in subsection (a) and a plan (including a cost analysis of the proposed system) for implementation of the system. Such report may include, if appropriate, recommendations for modifications of the system and legislation necessary in order to fully implement such system.

"(c) ADDITIONAL STUDY OF OTHER PERSONS INELIGIBLE TO PURCHASE FIREARMS.—The Attorney General in consultation with the Secretary of the Treasury shall conduct a study to determine if an effective method for immediate and accurate identification of other persons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g) of title 18, United States Code. In conducting the study, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. Such study shall be completed within 18 months after the date of the enactment of this Act [Nov. 18, 1988] and shall be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation.

"(d) DEFINITIONS.—As used in this section, the terms 'firearm' and 'dealer' shall have the meanings given such terms in section 921(a) of title 18, United States Code."

STUDIES TO IDENTIFY EQUIPMENT CAPABLE OF DISTINGUISHING SECURITY EXEMPLAR FROM OTHER METAL OBJECTS LIKELY TO BE CARRIED ON ONE'S PERSON

Section 2(e) of Pub. L. 100-649 provided that: "The Attorney General, the Secretary of the Treasury, and the Secretary of Transportation shall each conduct studies to identify available state-of-the-art equipment capable of detecting the Security Exemplar (as defined in section 922(p)(2)(C) of title 18, United States Code) and distinguishing the Security Exemplar from innocuous metal objects likely to be carried on one's person. Such studies shall be completed within 6 months after the

date of the enactment of this Act [Nov. 10, 1988] and shall include a schedule providing for the installation of such equipment at the earliest practicable time at security checkpoints maintained or regulated by the agency conducting the study. Such equipment shall be installed in accordance with each schedule. In addition, such studies may include recommendations, where appropriate, concerning the use of secondary security equipment and procedures to enhance detection capability at security checkpoints."

§ 923. Licensing

(a) No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Attorney General. The application shall be in such form and contain only that information necessary to determine eligibility for licensing as the Attorney General shall by regulation prescribe and shall include a photograph and fingerprints of the applicant. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business, as follows:

(1) If the applicant is a manufacturer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1,000 per year;

(B) of firearms other than destructive devices, a fee of \$50 per year; or

(C) of ammunition for firearms, other than ammunition for destructive devices or armor piercing ammunition, a fee of \$10 per year.

(2) If the applicant is an importer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1,000 per year; or

(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing ammunition, a fee of \$50 per year.

(3) If the applicant is a dealer—

(A) in destructive devices or ammunition for destructive devices, a fee of \$1,000 per year; or

(B) who is not a dealer in destructive devices, a fee of \$200 for 3 years, except that the fee for renewal of a valid license shall be \$90 for 3 years.

(b) Any person desiring to be licensed as a collector shall file an application for such license with the Attorney General. The application shall be in such form and contain only that information necessary to determine eligibility as the Attorney General shall by regulation prescribe. The fee for such license shall be \$10 per year. Any license granted under this subsection shall only apply to transactions in curios and relics.

(c) Upon the filing of a proper application and payment of the prescribed fee, the Attorney General shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the li-

cense. Nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and disposing of a personal collection of firearms, subject only to such restrictions as apply in this chapter to dispositions by a person other than a licensed manufacturer, importer, or dealer. If any firearm is so disposed of by a licensee within one year after its transfer from his business inventory into such licensee's personal collection or if such disposition or any other acquisition is made for the purpose of willfully evading the restrictions placed upon licensees by this chapter, then such firearm shall be deemed part of such licensee's business inventory, except that any licensed manufacturer, importer, or dealer who has maintained a firearm as part of a personal collection for one year and who sells or otherwise disposes of such firearm shall record the description of the firearm in a bound volume, containing the name and place of residence and date of birth of the transferee if the transferee is an individual, or the identity and principal and local places of business of the transferee if the transferee is a corporation or other business entity: *Provided*, That no other recordkeeping shall be required.

(d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

(A) the applicant is twenty-one years of age or over;

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (n) of this chapter;

(C) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder;

(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application;

(E) the applicant has in a State (i) premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time, or (ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time;

(F) the applicant certifies that—

(i) the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premise is located;

(ii)(I) within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business; and

(II) the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met; and


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PRESS RELEASE | 11/10/2015

Senate Approves Funding Bill That Allows Veterans to Access Medical Marijuana

Amendment Would Allow VA Doctors to Recommend Medical Marijuana to Their Patients in States Where It's Legal

The Senate today passed the FY2016 Military Construction and Veterans Affairs (MilCon-VA) Appropriations Bill, which includes language to allow Veterans Administration (VA) doctors to recommend medical marijuana to their patients in states where medical marijuana is legal. The language was included as an amendment in the Senate Appropriations committee in May.

"Veterans in medical marijuana states should be treated the same as any other resident, and should be able to discuss marijuana with their doctor," said Michael Collins, deputy director of national affairs for the Drug Policy Alliance. "It makes no sense that a veteran can't use medical marijuana if it helps them and it is legal in their state."

The Veterans Equal Access Amendment was sponsored by Republican Senator Steve Daines of Montana and Democratic Senator Jeff Merkley of Oregon. It passed the Committee 18-12 in a bipartisan vote. The funding bill will now be negotiated with the House's version as part of an omnibus spending bill.

"On this eve of Veterans/Armistice Day where we remember those who served in the military and the treaty agreement to reach peace concluding WWI, we see this victory as a step toward a peace treaty with the government we volunteered to defend with our lives and as a step toward restoring our first amendment rights and dignity as citizens of the United States," said TJ Thompson, a disabled Navy veteran.

Currently, the Department of Veterans Affairs (VA) specifically prohibits its medical providers from completing forms brought by their patients seeking recommendations or opinions regarding participation in a state medical marijuana program. The Daines-Merkley amendment authorizes VA physicians and other health care providers to provide recommendations and opinions regarding the use of medical marijuana to veterans who live in medical marijuana states.

In 2002, the Ninth Circuit Court of Appeals affirmed in *Conant v. Walters* the right of physicians to recommend medical marijuana, regardless of its illegality under federal law, as well as the right of patients to receive accurate information. The Daines-Merkley amendment supports that first amendment right and restores a healthy doctor-patient relationship.

There are numerous federal healthcare programs besides the VA such as Medicaid, Medicare, and CHIP – but only the VA prohibits physicians from discussing and recommending medical marijuana to their patients. A Medicare patient may freely discuss medical marijuana use with her doctor, while a returning veteran is denied the same right.

Studies have shown that medical marijuana can help treat post-traumatic stress and traumatic brain injury, illnesses typically suffered by veterans. A 2014 study of people with PTSD showed a greater than 75% reduction in severity of symptoms when patients were using marijuana to treat their illness, compared to when they were not.

A legislative version of the Daines-Merkley amendment was included in groundbreaking Senate medical marijuana legislation introduced in March. The Compassionate Access, Research Expansion and Respect

States (CARERS) Act is the first-ever bill in the U.S. Senate to legalize marijuana for medical use and the most comprehensive medical marijuana bill ever introduced in Congress. The bill was introduced by Senators Cory Booker (D-NJ), Rand Paul (R-KY), and Kirsten Gillibrand (D-NY) and generated enormous interest.

With the Senate approving one element in the bill, supporters say it is time for the Senate Judiciary Committee to hold hearings on the full bill.

"The politics around marijuana have shifted in recent years, yet Judiciary Chairman Chuck Grassley hasn't held a hearing on the bill," said Bill Piper, director of national affairs for the Drug Policy Alliance. "We will move the CARERS Act piece by piece if we have to but now is the time for the Senate to hold a hearing on the bill as a whole."

Contact:

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Search



**350 Or. 299
253 P.3d 1058
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**Cynthia Townsley WILLIS, Petitioner--
Respondent, Respondent on Review,
v.**

**Michael WINTERS, in his official
capacity as Sheriff of Jackson County,
Respondent--Appellant, Petitioner on
Review.Paul SANSONE, Plaintiff--
Respondent, Respondent on Review,
v.**

**Rob Gordon, in his official capacity as
the Sheriff of Washington County,
Respondent--Appellant, Petitioner on
Review.Steven Schwerdt, Plaintiff--
Respondent, Respondent on Review,
v.**

**Rob Gordon, in his official capacity as
the Sheriff of Washington County,
Respondent--Appellant, Petitioner on
Review.Lee Wallick, Plaintiff--
Respondent, Respondent on Review,
v.**

**Rob Gordon, in his official capacity as
the Sheriff of Washington County,
Respondent--Appellant, Petitioner on
Review.**

**(CC 07-2755-Z7; CA A139875; SC
So58645 (Control); CC Co73809CV**

Coo73810CV

Co73811CV; CA A139802; SC So58642).

Supreme Court of Oregon, En Banc.

**Argued and Submitted March 3,
2011.Decided May 19, 2011.**

[253 P.3d 1059]

On review from the Court of Appeals.*Elmer
M. Dickens, Senior Assistant County Counsel,
Washington County Counsel, Office

[253 P.3d 1060]

of County Counsel, Hillsboro, argued the
cause and filed the briefs for petitioner on
review Robert Gordon, Sheriff of Washington
County.James R. Kirchoff, Jackson County
Counsel, Medford, argued the cause for
petitioner on review Michael Winters. With
him on the brief was G. Frank
Hammond.Leland R. Berger, Portland,
argued the cause for respondents on review
Cynthia Townsley Willis, Paul Sansone,
Steven Schwerdt, and Lee Wallick. With him
on the brief was John C. Lucy.Denise G.
Fjordbeck, Attorney-in-Charge
Civil/Administrative Appeals, Salem, filed a
brief on behalf of amicus curiae State of
Oregon. With her on the brief were John R.
Kroger, Attorney General, and Mary H.
Williams, Solicitor General.Margaret H. Leek
Leiberan, Jensen & Leiberan, Beaverton, filed
a brief on behalf of amicus curiae ACLU
Foundation of Oregon, Inc.**DE MUNIZ, C.J.**

[350 Or. 302] In these consolidated
cases, the sheriffs of Jackson and Washington
counties withheld concealed handgun licenses
from persons who met all of the statutory
conditions for issuance of such licenses, but
who admitted to regular use of medical
marijuana pursuant to registry identification
cards issued under the Oregon Medical
Marijuana Act, ORS 475.300 to 475.346.
When the sheriffs' actions were challenged in
court, the sheriffs responded that, to the
extent that Oregon's concealed handgun
licensing scheme does not concern itself with
the applicants' use of medical marijuana, it is
preempted by a *federal* prohibition on the
possession of firearms by persons who, under
federal law, are "unlawful user[s] * * * of a[]
controlled substance." 18 U.S.C. § 922(g)(3).
Both trial courts and, later, the Court of
Appeals, rejected that preemption argument
and held that the concealed handgun licenses
were wrongfully withheld. We allowed the
sheriffs' petitions for review and now add this
court's voice to the lower courts': We hold
that the Federal Gun Control Act does *not*
preempt the state's concealed handgun

licensing statute and, therefore, the sheriffs must issue (or renew) the requested licenses.

Before turning to the facts of the two cases, we describe some of the relevant statutory background. At the outset, we observe that Oregon's concealed handgun licensing statute does not purport to regulate the *possession* of firearms.¹ Rather, the statute deals with a particular placement or use of a firearm— *the carrying of a firearm concealed on one's person or its concealment, within the possessor's reach, in a vehicle*. In Oregon, it is a crime—a misdemeanor—to carry a firearm that is concealed in either of those ways. ORS 166.250(1)(a), (b). However, that criminal prohibition does [350 Or. 303] not apply to certain specified categories of persons, including “a[ny] person who is licensed under ORS 166.291 and ORS 166.292 to carry a concealed handgun.” ORS 166.260(1)(h).

To obtain a concealed handgun license (CHL), a person must meet certain residency, age, and background requirements. ORS 166.291(1) (set out below, 350 Or. at 303–05, 253 P.3d at 1061). None of those requirements turns on the mere *use* of marijuana or other controlled substances; however, one requirement for obtaining a CHL is that the person “has not been *convicted* of an offense involving controlled substances.” ORS 166.291(1)(L) (emphasis added).

[253 P.3d 1061]

To obtain a CHL, a person must submit an application, along with a fee, to the sheriff of the county in which the applicant resides. ORS 166.291(1)(a), (5). The form of the application is dictated by statute: It sets out the various statutory requirements for issuance of a CHL and a declaration that the applicant meets those requirements, which

the applicant must sign. ORS 166.291(4). Upon a person's submission of an application:

“[t]he sheriff of a county, * * * upon receipt of the appropriate fees and after compliance with the procedures set out in this section, *shall* issue the person a concealed handgun license if the person:

“(a)(A) Is a citizen of the United States; or

“(B) Is a legal resident alien who can document continuous residency in the country for at least six months and has declared * * * the intent to acquire citizenship status * * *;

“(b) Is at least 21 years of age;

“(c) Is a resident of the county;

“(d) Has no outstanding warrants for arrest;

“(e) Is not free on any form of pretrial release;

“(f) Demonstrates competence with a handgun [in certain specified ways]:

“ * * * * *

[350 Or. 304] “(g) Has never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;

“(h) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor within the four years prior to the application;

“(i) Has not been committed to the Oregon Health Authority under ORS 426.130;

“(j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that the person be prohibited from

purchasing or possessing a firearm as a result of that mental illness;

“(k) Has been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, the person was found to be within the jurisdiction of the juvenile court for having committed an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470;

“(L) Has not been convicted of an offense involving controlled substances or participated in a court-supervised drug diversion program [with certain listed exceptions]:

“ * * * * *

“(m) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.735 or 163.738 [(i.e., a stalking citation or domestic violence restraining order)];

“(n) Has not received dishonorable discharge from the Armed Forces of the United States; and

“(o) Is not required to register as a sex offender in any state.”

ORS 166.291(1) (emphasis added). There is one exception to the requirement that a license be issued to any applicant who meets the standards set out at ORS 166.291(1):

“Notwithstanding ORS 166.291(1), and subject to review as provided in subsection (5) of this section, a sheriff may deny a concealed handgun license if the sheriff has reasonable grounds to believe that the applicant has been or is reasonably likely to be a danger to self or others, or to [350 Or. 305] the community at large, as a result of the applicant's mental or psychological state or as demonstrated by the applicant's past pattern

of behavior involving unlawful violence or threats of unlawful violence.”²

ORS 166.293(2).

With that statutory background in mind, we turn to the two cases that are before us. In *Willis v. Winters*, 235 Or.App. 615, 234 P.3d 141 (2010), an applicant wished to renew an expired CHL and submitted a renewal application to the sheriff of the county where she resided (Jackson County), as required by

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ORS 166.295(1)(a).³ The application form was substantially in the form required by ORS 166.291(4) (described above, 350 Or. at 302–04, 253 P.3d at 1060–61); however, it contained additional questions about the applicant's use of drugs that the Jackson County Sheriff had added on his own initiative. In her responses to those additional questions, the applicant indicated that she used marijuana regularly and that her use had been authorized by a medical doctor. The sheriff denied the application on the ground that, under federal law, 21 U.S.C. § 841(a)(1), the applicant's use of marijuana was unlawful, and, as an illegal user of marijuana, she was prohibited from possessing firearms under 18 U.S.C. section 922(g) of the Gun Control Act of 1968, Pub L 90–618, 82 Stat 1213 (1968). The sheriff acknowledged that the applicant possessed an Oregon Medical Marijuana card that purported to authorize her use of marijuana, but he concluded that the federal prohibition on possession of firearms by unlawful users of controlled substances preempted Oregon's concealed handgun licensing law. The sheriff argued, in addition, that his issuance of a CHL to the applicant was prohibited under 18 U.S.C. section 922(a)(6),⁴ because it would likely deceive [350 Or. 306] firearms dealers with respect to the lawfulness of selling firearms to the applicant.

The applicant sought judicial review of that denial in the Circuit Court for Jackson County, as provided in ORS 166.293(5). The circuit court rejected the sheriff's preemption arguments and ordered him to renew the applicant's CHL. The Court of Appeals affirmed. *Willis*, 235 Or.App. at 629, 234 P.3d 141. We describe the Court of Appeals opinion in *Willis* below.

The facts of *Sansone v. Gordon*, 235 Or.App. 695, 234 P.3d 150 (2010), are substantially the same, except that that case involved the sheriff of Washington County and three separate applicants who resided in that county. Each of the three applicants sought to obtain or renew a CHL; each filled out an application that contained questions about marijuana use that the sheriff had added to the form; each received a letter from the sheriff denying the application and explaining that Oregon's concealed handgun licensing statutes were preempted by federal drug and firearm statutes and that issuance of the CHLs would violate 18 U.S.C. section 922(a)(6); and each sought review of the denial in Washington County Circuit Court as provided in ORS 166.293(5). The court consolidated the cases and ultimately ordered the sheriff to issue or reinstate the applicants' CHLs. On the sheriff's appeal, the Court of Appeals affirmed, citing its opinion in *Willis*, which it had issued the week before. *Sansone*, 235 Or.App. at 696, 234 P.3d 150.

In *Willis*, the Court of Appeals resolved the issue of whether the federal prohibition on possession of firearms by "unlawful user[s] of controlled substances," 18 U.S.C. § 922(g)(3), preempted the Oregon statutes concerning CHLs by applying the preemption analysis employed by this court in *Emerald Steel Fabricators, Inc. v. BOLI*, 348 Or. 159, 230 P.3d 518 (2010). Invoking a distinction drawn in *Emerald Steel* between provisions that "affirmatively authorize" conduct that federal law prohibits and provisions that exempt conduct from criminal prosecution, the Court of Appeals held in *Willis* that

Oregon's concealed handgun licensing statute [350 Or. 307] is *not* preempted by federal law, because it does not affirmatively authorize what the federal statute prohibits—*i.e.*, possession of firearms by unlawful drug users—but, instead, merely exempts licensees from state

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criminal liability for the possession of a concealed handgun. 235 Or.App. at 627, 234 P.3d 141.

The Court of Appeals in *Willis* also considered, and rejected, an alternative argument proffered by the sheriffs for refusing to issue a CHL to a medical marijuana user—that a sheriff's issuance of a CHL to such a person would violate a federal law, 18 U.S.C. § 922(a)(6), because it would likely mislead gun dealers "with respect to a[] fact material to the lawfulness of the sale [of firearms]" to the person (the material fact being that the sheriff had conducted a background check and had determined that the person was not prohibited from possessing firearms). The Court of Appeals concluded that that argument was based on an erroneous assumption that Oregon law requires a county sheriff to determine whether an applicant's possession of firearms would be unlawful before issuing a CHL to the applicant. *Id.* at 627–29, 234 P.3d 141. Ultimately, the court concluded that the denial of petitioner's CHL application was erroneous and affirmed the trial court's decision. As noted, the Court of Appeals shortly thereafter affirmed the trial court's decision in *Sansone*, relying on its decision in *Willis*.

The respondents in *Willis* and *Sansone*, *i.e.*, the sheriffs of Jackson and Washington counties, separately petitioned for review by this court. We allowed their petitions and consolidated their cases for purposes of review. For the reasons discussed below, we conclude that (1) a sheriff's duty under the

Oregon concealed handgun licensing law, to issue CHLs to qualified applicants without regard to their use of medical marijuana, is *not* preempted by 18 U.S.C. section 922(g)(3); and (2) neither is a sheriff excused from that duty on the ground that issuance of a concealed handgun license to a medical marijuana user would violate a federal law prohibiting the making of any statement that is likely to deceive a gun dealer regarding the lawfulness of the sale of a firearm.

We address the preemption issue first. The power of Congress to preempt state law arises from the Supremacy Clause of Article VI of the United States Constitution, which [350 Or. 308] provides that the laws of the United States are “the supreme law of the land,” and that the state courts “shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.” The United States Supreme Court has identified three circumstances that result in the preemption of state law by federal law: (1) when the federal law expressly provides for preemption; (2) when a congressional statutory scheme so completely occupies the field with respect to some subject matter that an intent to exclude the states from legislating in that subject area is implied; and (3) when an intent to preempt is implied from an actual conflict between state and federal law. *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372, 120 S.Ct. 2288, 147 L.Ed.2d 352 (2000). The third type of preemption exists not only when it is physically impossible to comply with both the state and federal law, but when “under the circumstances of the particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hines v. Davidowitz*, 312 U.S. 52, 67–68, 61 S.Ct. 399, 85 L.Ed. 581 (1941).

Only the third type of preemption—preemption implied from an actual conflict—is relevant in the present case. That is so because the Gun Control Act of 1968 (the

federal statute at issue) expressly renounces any Congressional intent to preempt state law unless the law is in “direct and positive” conflict with the Act. 18 U.S.C. § 927.⁵

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[350 Or. 309] As will be seen, the real point of contention in this case concerns the second of the two kinds of conflict preemption—“obstacle” preemption. Federal cases teach us that “obstacle preemption” questions are to be resolved by examining the federal law to ascertain its purposes and intended effects, examining the state statute to determine its effects, and comparing the results to determine whether the latter statute in some way obstructs the accomplishment of the objectives that have been identified with respect to the former statute. See, e.g., *Perez v. Campbell*, 402 U.S. 637, 644, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971) (obstacle preemption analysis involves construction of federal and state statutes and then determination of whether they are in conflict); *Crosby*, 530 U.S. at 373, 120 S.Ct. 2288 (“What is a sufficient obstacle [to federal objectives] is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects[.]”). When traditional regulatory powers of the states are implicated (as in the present case), that analysis incorporates a presumption that Congress did *not* intend to preempt. See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947) (preemption analysis assumes that “historic [‘]police [‘] powers of the States [are] not to be superseded by [a] Federal Act unless that was the clear and manifest purpose of Congress”); see also *Murphy v. Waterfront Commission of New York*, 378 U.S. 52, 96, 84 S.Ct. 1594, 12 L.Ed.2d 678 (1964) (Justice White concurring) (states have primary responsibility for the administration of the criminal law and federal preemption of areas

of crime control traditionally reserved to the states has been relatively unknown).

With the foregoing approach to obstacle preemption questions in mind, we turn to the statutes at issue.⁶ Earlier in [350 Or. 310] the opinion, we described the relevant Oregon statutes at length. Briefly, those statutes (1) define as a crime the possession of firearms by certain classes of persons, but do not include either lawful or unlawful “users” of controlled substances in any of those classes (ORS 166.250(1)(c)); (2) define as a crime the concealed (but not the open) carrying of a firearm and the concealment of a firearm on one’s person or within its possessor’s reach in a motor vehicle, unless the person has a valid concealed handgun license (ORS 166.250(1)(a) and (b), ORS 166.260(1)(h)); and (3) require county sheriffs to issue a CHL to any applicant for a license who meets certain age, residency, and background requirements, without regard to the applicant’s use of controlled substances (ORS 166.291).⁷

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The federal statute at issue, 18 U.S.C. § 922(g), provides, in relevant part:

“It shall be unlawful for any person—

*“ * * * * **

“(3) who 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));

*“ * * * * **

*“ * * * to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has*

been shipped or transported in interstate or foreign commerce.”

[350 Or. 311] (Emphasis added.) The federal statute thus makes it a federal crime for a person who uses marijuana in violation of federal law to possess a firearm in or affecting commerce. The United States Supreme Court has construed 18 USC section 922(g) in terms of “keep[ing] firearms away from the persons Congress classified as potentially irresponsible and dangerous.” *Barrett v. United States*, 423 U.S. 212, 218, 96 S.Ct. 498, 46 L.Ed.2d 450 (1976) (construing earlier version of 18 USC section 922(g)); see also *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 112 n. 6, 103 S.Ct. 986, 74 L.Ed.2d 845 (1983) (in enacting 18 U.S.C. § 922(g), Congress sought to keep firearms out of the hands of “presumptively risky people”). Because, under the federal Controlled Substances Act, 21 U.S.C. §§ 801–971, marijuana is a Schedule I controlled substance with no lawful uses, 21 U.S.C. § 812(b)(1), (c)(10), marijuana users necessarily are “unlawful users” for purposes of 18 U.S.C. section 922(g)(3)—and in a class of persons from whom Congress wishes to keep guns. Thus, the federal “purpose [] and intended effect[]” that is relevant to our inquiry is that of keeping firearms away from marijuana users, without regard to the lawfulness of such use under the laws of their state of residence.

The method Congress chose to accomplish that purpose is to make it a crime for all marijuana users to “possess firearms in or affecting commerce.” Congress did not choose to effectuate its policy by enacting a law governing the conduct of state sheriffs—by, for example, prohibiting state law enforcement officers from issuing gun licenses to marijuana users. Consequently, there is no direct conflict between the federal and state statutes under consideration, in the sense of it being impossible to comply with both.

That leaves us to consider the other potential basis for conflict preemption: Does ORS 166.291, which requires county sheriffs to issue CHLs to qualified applicants even if they use marijuana in violation of federal law, stand as an obstacle to the full accomplishment and exercise of the federal firearms statute's purpose? The sheriffs contend that it does, because it allows marijuana users—persons who are deemed *by Congress* to be unqualified to possess firearms—to obtain licenses that effectively *authorize* their possession of firearms. But, as we have already observed, 350 Or. at 302–04, 253 P.3d at 1060–61, [350 Or. 312] that contention does not accurately reflect the actual terms of the CHL statute. Putting aside the question of whether the CHL statute affirmatively “authorizes” *anything*, the fact remains that the statute is not directly concerned with the *possession* of firearms, but with the *concealment* of firearms in specified locations—on one's person or in one's car. Although, in their briefing, the sheriffs treat that distinction as having no practical significance, there is nothing in the federal preemption analysis that would support that kind of broad brush approach. In fact, it is clear that, when the federal courts attempt to determine whether a state law stands as an obstacle to congressional purposes, they attempt to define the effect of the state statute with considerable precision. *See, e.g., Florida Avocado Growers v. Paul*, 373 U.S. 132, 144–46, 83 S.Ct. 1210, 10 L.Ed.2d 248 (1963) (California statute that, *for purpose of protecting California consumers*, prohibited sale of avocados with oil content of less than eight percent, was not preempted by federal standards that established lower oil content *for determining when avocados were sufficiently mature to be picked, processed, and transported*).

Neither is the statute an obstacle to Congress's purposes in the sense that it interferes with the ability of the federal government to enforce the policy that the Gun

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Control Act expresses. A marijuana user's possession of a CHL may exempt him or her from prosecution or arrest under ORS 166.250(1)(a) and (b), but it does not in any way preclude full enforcement of the federal law by federal law enforcement officials.

In fact, it is possible that the sheriffs in this case could themselves enforce section 922(g)(3) of the federal Gun Control Act against medical marijuana users who possess guns in violation of federal law. The federal act makes such possession illegal, the sheriffs generally are authorized to enforce federal as well as state law, and no state law prohibits the sheriffs from taking such enforcement actions. But it appears that the sheriffs *also* wish to enforce the federal policy of keeping guns out of the hands of marijuana users by using the state licensing mechanism to deny CHLs to medical marijuana users. The problem that the sheriffs have encountered is that Congress has not enacted a law requiring license denial as a means of enforcing the policy that underlies the [350 Or. 313] federal law, and the state has adopted a licensing statute that manifests a policy decision *not* to use its gun licensing mechanism for that purpose: State law *requires* sheriffs to issue concealed gun licenses without regard to whether the applicants use medical marijuana.

In other words, the real thrust of the sheriffs' argument appears to be that the state's choice *not* to use its gun licensing mechanism to enforce the federal policy is preempted, even though the federal law that the sheriffs rely on does not in any way mandate the use of state gun licensing schemes in any particular way. One obvious problem with that position is that it presumes that Congress has authority that, in fact, it does not have. It is well established that the federal government lacks constitutional authority to commandeer the policy-making or enforcement apparatus of the states by

requiring them to enact or enforce a federal regulatory program. *Printz v. United States*, 521 U.S. 898, 925–31, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997); *New York v. United States*, 505 U.S. 144, 161–69, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). Although the United States Constitution establishes the supremacy of the federal government in most respects, it reserves to the states certain powers that are at the core of state sovereignty. *New York*, 505 U.S. at 156–61, 112 S.Ct. 2408. One expression of that reservation of powers is the notion that Congress lacks authority “to require the states to govern according to Congress’s instructions.” *Id.* at 162, 112 S.Ct. 2408.⁸

It follows from that “anti-commandeering” principle that Congress lacks authority to require the states to use their gun licensing mechanisms to advance a particular federal purpose. If Congress lacks the constitutional authority to commandeer the state gun licensing statutes in that fashion, then we can hardly imply an intent to commandeer state gun licensing laws from a federal statute that does not even mention them. Congress did not directly require the states to use their gun licensing mechanisms for the purpose of keeping guns out of the hands of marijuana users, and we conclude [350 Or. 314] that Congress did not intend to achieve that same result by making it illegal for medical marijuana users to possess guns. The state’s decision not to use its gun licensing mechanism as a means of enforcing federal law does not pose an obstacle to the enforcement of that law. Federal officials can effectively enforce the federal prohibition on gun possession by marijuana users by arresting and turning over for prosecution those who violate it.

Ultimately, then, we reject the sheriffs’ contention that, to the extent that ORS 166.291 requires county sheriffs to issue CHLs to qualified applicants without regard to their use of medical marijuana, the statute is preempted by the federal prohibition on

gun possession by marijuana users at 18 U.S.C. section 922(g)(3). The sheriffs cannot justify their denial of the applications at issue on that ground.

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The sheriffs offer an alternative legal justification for their refusal to issue CHLs to petitioners—that, by doing so, they would be violating a federal prohibition on knowingly making a “false” oral or written statement that would be “likely to deceive” gun dealers with respect to the lawfulness of selling a firearm to petitioners. 18 U.S.C. § 922(a)(6).⁹ The sheriffs observe that 18 U.S.C. section 922(t)(1) requires gun dealers, before transferring any firearm to any person not licensed under federal law to deal in guns, to contact the “national instant criminal background system” for a determination that that person’s receipt of a gun would not be unlawful. The sheriffs further observe that, under 18 U.S.C. section 922(t)(3), that requirement

“shall not apply to a firearm transfer between a [licensed gun dealer] and another person if—

[350 Or. 315] “(A)(i) such other person has presented to the [licensed gun dealer] a permit that—

“(I) allows such other person to possess or acquire a firearm;

“(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

“(ii) the law of the State provides that such a permit is to be issued only *after* an authorized government official has verified that the information available to such official does not indicate that possession of a firearm

by such other person would be in violation of law.”

The sheriffs contend that a prospective gun purchaser's presentation of a license issued under ORS 166.291(1) would have a tendency to lead a gun dealer to believe that the requirements of 18 U.S.C. section 922(t)(3) had been satisfied (*i.e.*, that the issuer of the license had performed a background check and had determined that the licensee's possession of a firearm was lawful) and that the requirement that the dealer contact the national instant criminal background system before selling a gun to the licensee was waived. The sheriffs argue that, in light of that tendency, their issuance of a CHL to a person who is known to use medical marijuana (and who therefore is known to be prohibited from owning firearms under federal law) would be likely to deceive gun dealers about the lawfulness of selling a firearm to the person and thus would violate 18 U.S.C. section 922(a)(6).¹⁰

The sheriffs' argument is problematic for two reasons. First, it does not address the fact that, to violate 18 U.S.C. section 922(a)(6), the statement regarding the lawfulness of the contemplated firearms transfer that is “likely to deceive” the gun dealer must in fact be “false.” An Oregon CHL issued in conformity with the requirements of ORS 166.291(1) is not false: It may indirectly convey an assurance that the licensee meets the requirements for issuance of such a license under [350 Or. 316] ORS 166.291(1),¹¹ but it does not purport to assure the lawfulness of the licensee's *possession* of firearms under federal law, even indirectly.

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Second, there is little likelihood that a gun dealer who is attempting to follow the applicable law would be “deceiv[ed]” into a belief that the requirements of 18 U.S.C.

section 922(t)(3) had been satisfied by a prospective buyer's presentation of an Oregon CHL. That federal statute excepts a firearm transfer from the requirement of a national instant criminal background check *only* if the prospective buyer presents a permit, issued in the last five years by the state in which the transfer is to take place, that allows the person to possess or acquire a firearm, *and*

“the law of the State provides that such a permit is to be issued only *after* an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law.”

18 U.S.C. § 922(t)(3)(A)(ii) (emphasis added). Under that provision, the national instant criminal background check is not waived by the mere fact that a government official in the relevant state has issued a gun license of some undefined variety to the prospective buyer. Rather, waiver of the background check depends on the law of the state that issued the permit. No Oregon law requires verification of compliance with federal law as a condition of issuance of a CHL. Any gun dealer that accepts an Oregon CHL as proof that the requirements of 18 U.S.C. section 922(t)(3) have been satisfied does so in disregard of Oregon's statutory scheme and cannot be said to have been deceived by anything other than the gun dealer's own lack of awareness of Oregon law.

[350 Or. 317] To conclude: the sheriffs in this case are not excused from their duty under ORS 166.291(1) to issue CHLs to qualified applicants, without regard to the applicant's use of medical marijuana, on the ground that issuance of CHLs to medical marijuana users would violate a federal prohibition on making false statements about the lawfulness of transferring firearms to such persons. Neither are the sheriffs excused from that statutory duty on the ground that it is preempted by federal law. The sheriffs were

without authority to deny petitioner's CHL applications.

The decisions of the Court of Appeals are affirmed. The judgments of the circuit courts are affirmed.

Notes:

*—Appeal from Jackson County Circuit Court, Mark S. Schiveley, Judge. 235 Or.App. 615, 234 P.3d 141 (2010).

Appeal from Washington County Circuit Court, Steven L. Price, Judge. 235 Or.App. 695, 234 P.3d 150 (2010).

¹—As a general proposition, individuals in Oregon have a right to possess firearms for defense of self and property, under Article I, section 27, of the Oregon Constitution. *See generally State v. Hirsch/Friend*, 338 Or. 622, 114 P.3d 1104 (2005). However, ORS 166.250(1)(c) makes it a crime for certain categories of persons—minors, felons, etc.—to “possess” firearms. Another subsection of the same statute explicitly provides that a person who is *not* within any of the excepted categories does *not* violate the law by “owning, possessing or keeping within the person's place of residence or place of business any handgun.” ORS 166.250(2)(b). Yet another subsection provides that such a person does not violate the law by carrying a firearm “openly” in a belt holster. ORS 166.250(3).

²—There is no claim in the present case that the sheriffs denied any of the petitioner's applications under ORS 166.293(2) or believed that any of the petitioners were likely to be a danger to themselves or others, or to the community at large.

³—Under ORS 166.295(1)(a), the requirements for renewal of a CHL are identical to the requirements for an initial

license set out at ORS 166.291, except that the applicant for renewal need not provide fingerprints and character references.

⁴—18 U.S.C. section 922(a)(6) makes it unlawful

“for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter[.]”

⁵—18 U.S.C. section 927 provides:

“No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, *unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.*”

Consistently with the United States Supreme Court's preemption analysis in the face of identical wording in the federal statute at issue in *Wyeth v. Levine*, 555 U.S. 555, ---, 129 S.Ct. 1187, 1196–1204, 173 L.Ed.2d 51, 61–70 (2009), we assume that the words “direct and positive conflict” refer to the third type of preemption identified in *Crosby*—preemption implied from an actual conflict—and that such a conflict can be demonstrated by showing that compliance with both the federal and state law is impossible or that the state law “stands as an obstacle” to the full realization of the objectives expressed in the federal law. *See Emerald Steel*, 348 Or. at 175

n. 15, 230 P.3d 518 (following *Wyeth* approach to similarly worded savings clause in the Controlled Substances Act, 21 U.S.C. §§ 801–971).

6.—Rather than employing this basic federal approach to obstacle preemption problems, the parties (and the Court of Appeals) have couched their arguments primarily in terms of whether ORS 166.291 “affirmatively authorizes” possession of firearms by marijuana users or merely permits marijuana users to be exempted from criminal liability under ORS 166.250(1)(a) and (b) for Unlawful Possession of a Firearm. Those arguments clearly are directed at this court’s decision in *Emerald Steel*, which held that a provision of the Oregon Medical Marijuana Act that “affirmatively authorized” the possession of marijuana for medical uses was preempted by the federal Controlled Substances Act, because it stood as an obstacle to a congressional purpose that inhered in that act—of prohibiting marijuana possession for *any* purpose. 348 Or. at 178, 230 P.3d 518. However, *Emerald Steel* should not be construed as announcing a stand-alone rule that any state law that can be viewed as “affirmatively authorizing” what federal law prohibits is preempted. Rather, it reflects this court’s attempt to apply the federal rule and the logic of the most relevant federal cases to the particular preemption problem that was before it. And particularly where, as here, the issue of *whether* the statute contains an affirmative authorization is not straightforward, the analysis in *Emerald Steel* cannot operate as a simple stand-in for the more general federal rule.

7.—As discussed above, ORS 166.293(2) permits a sheriff to decline to issue a CHL if the sheriff has “reasonable grounds to believe that the applicant has been or is reasonably likely to be a danger to self or others, or to the community at large,” based on certain specified factors. The sheriffs here did not rely on that statute in denying the permits in these cases.

8.—The United States Supreme Court has further observed that, while Congress has the authority to pass laws requiring or prohibiting certain acts, it lacks the power to compel *the states* to require or prohibit those acts. *New York*, 505 U.S. at 166, 112 S.Ct. 2408. However, Congress can *encourage* states to adopt or enforce federal policy preferences with financial and other sorts of incentives. *Id.* at 166–68, 112 S.Ct. 2408.

9.—18 U.S.C. section 922(a)(6) provides that it shall be unlawful:

“for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter[.]”

10.—The sheriffs appear to have abandoned their related argument in the Court of Appeals that issuance of a CHL to a known medical marijuana user is a “false” (rather than deceptive) statement, because it *actually* asserts that the issuer has performed a background check and has determined that the licensee lawfully may possess firearms.

11.—On its face, a CHL provides certain pertinent information about the licensee, the name of the issuer of the license, and the date and place of its issuance, all under the heading “Oregon Concealed Handgun License.” See ORS 166.292(3) (setting out form of concealed handgun license). If an interested party were to examine the statutory standards for issuance of an Oregon CHL, they might reasonably assume that the issuer

had concluded that the licensee satisfied the requirement set out at ORS 166.291(1).

**S. ROWAN WILSON, Plaintiff-
Appellant,
v.
LORETTA E. LYNCH, Attorney
General; BUREAU OF ALCOHOL,
TOBACCO, FIREARMS AND
EXPLOSIVES; B. TODD JONES,
as Acting Director of U.S. Bureau of
Alcohol, Tobacco,
Firearms and Explosives; ARTHUR
HERBERT, as Assistant Director of
U.S. Bureau of Alcohol,
Tobacco, Firearms and Explosives; and
UNITED STATES OF AMERICA,
Defendants-Appellees.**

No. 14-15700

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**Argued and Submitted: July 21, 2016
August 31, 2016**

FOR PUBLICATION

D.C. No. 2:11-CV-01679-GMN-PAL

OPINION

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, Chief District Judge,
Presiding

Argued and Submitted July 21, 2016 San
Francisco, California

Page 2

Before: Susan P. Graber and Richard C.
Tallman, Circuit Judges, and Jed S. Rakoff,*
Senior District Judge.

Opinion by Judge Rakoff

SUMMARY**

Civil Rights

The panel affirmed the district court's dismissal of a complaint challenging the federal statutes, regulations, and guidance that prevented plaintiff from buying a gun because she possesses a Nevada medical marijuana registry card.

The panel preliminarily held that plaintiff lacked standing to challenge 18 U.S.C. § 922(g)(3), which criminalizes possession or receipt of a firearm by an unlawful drug user or a person addicted to a controlled substance. Plaintiff had not alleged that she was an unlawful drug user or that she was addicted to any controlled substance. Nor had she alleged that she possessed or received a firearm. The panel further held that plaintiff's remaining claims were not moot because she represented that she has routinely renewed her registry card.

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The panel held that plaintiff's Second Amendment claims did not fall within the direct scope of *United States v. Dugan*, 657 F.3d 998 (9th Cir. 2011), which held that the Second Amendment does not protect the rights of unlawful drug users to bear arms. Taking plaintiff's allegations in her first amended complaint as true - that she chose not to use medical marijuana - the panel concluded that plaintiff was not actually an unlawful drug user.

The panel held that 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives to federal firearms licensees, which prevented plaintiff from purchasing a firearm, directly burdened plaintiff's core Second Amendment right to possess a firearm. Applying intermediate scrutiny, the panel nevertheless held that the fit between the challenged provisions and the Government's substantial interest of violence prevention was reasonable, and therefore the district court did not err by dismissing the Second Amendment claim.

The panel rejected plaintiff's claims that the challenged laws and Open Letter violated the First Amendment. The panel held that any burden the Government's anti-marijuana and anti-gun-violence efforts placed on plaintiff's expressive conduct was incidental, and that the Open Letter survived intermediate scrutiny.

The panel held that the challenged laws and Open Letter neither violated plaintiff's procedural due process rights protected by the Due Process Clause of the Fifth Amendment nor violated the Equal Protection Clause as incorporated into the Fifth Amendment. Plaintiff did not have a constitutionally protected liberty interest in simultaneously

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holding a registry card and purchasing a firearm, nor was she a part of suspect or quasi-suspect class.

Finally, rejecting the claim brought under the Administrative Procedure Act, the panel agreed with the district court that the Open Letter was a textbook interpretative rule and that it was exempt from the Act's notice-and-comment procedures.

COUNSEL

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Abby C. Wright (argued) and Michael S. Raab, Attorneys, Appellate Staff; Daniel G. Bogden, United States Attorney; Civil Division, Department of Justice, Washington, D.C.; for Defendants-Appellees.

OPINION

RAKOFF, Senior District Judge:

Plaintiff-Appellant S. Rowan Wilson acquired a Nevada medical marijuana registry card. She then sought to purchase a firearm, but the firearms dealer knew that Wilson held a registry card. Consistent with a letter issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"), the dealer refused to sell Wilson a firearm because of her registry card. Wilson sued, challenging the federal statutes, regulations, and guidance that prevented her from buying a

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gun. The district court dismissed Wilson's complaint, and Wilson appealed. We affirm.

BACKGROUND

Marijuana is classified as a Schedule I controlled substance under the Controlled Substances Act, 21 U.S.C. § 812. As a Schedule I controlled substance, marijuana, under federal law, is deemed to have "no currently accepted medical use in treatment[, and] [t]here is a lack of accepted safety for use of the . . . substance under medical supervision." *Id.* § 812(b)(1)(B) & (C).¹

This, however, is not the view of the State of Nevada. Although Nevada law criminalizes the possession of marijuana, *see Nev. Rev. Stat. § 453.336(4)*, Nevada's Constitution was amended in 2000 to provide for medical marijuana use, *see Nev. Const. art. IV, § 38*. Under a statutory scheme enacted pursuant to this constitutional amendment, a holder of a valid marijuana registration ID card (a "registry card") is exempt from state prosecution for marijuana-related crimes. *Nev. Rev. Stat. § 453A.200*. To acquire a registry card, an applicant must provide documentation from an attending physician affirming that the applicant has a chronic or debilitating medical condition, that the medical use of marijuana may mitigate the symptoms of the condition, and that the physician has explained to the

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applicant the risks and benefits of the medical use of marijuana. *Id.* §453A.210(2)(a)(1)-(3). Cardholders must also comply with certain ongoing requirements, including limitations on the amount of marijuana they have at one time, *id.* § 453A.200(3)(b), as well as the requirement that they "[e]ngage in . . . the medical use of marijuana in accordance with the provisions of this chapter as justified to mitigate the symptoms or effects of a person's chronic or debilitating medical condition," *id.* § 453A.200(3)(a). A registry card is valid for one year and may be renewed annually by submitting updated written documentation from a physician. *Id.* §§ 453A.220(5), 453A.230(1)(b).

Turning to federal firearms provisions, under 18 U.S.C. § 922(g)(3) no person "who is an unlawful user of or addicted to any controlled substance" may "possess . . . or . . . receive any firearm or ammunition." In addition, it is unlawful for "any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person . . . is an unlawful user of or addicted to any controlled substance." *Id.* § 922(d)(3).

The ATF has promulgated regulations implementing § 922 and defining a person "who is an unlawful user of or addicted to any controlled substance." *See* 27 C.F.R. § 478.11. The ATF has also developed Form 4473, which confirms eligibility for gun ownership under § 922. Prospective purchasers of firearms fill out Form 4473 when they seek to buy a firearm. Form 4473 includes Question 11.e., which asks "Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?" *See* Firearms Transaction Record Part I - Over-the-Counter ("Form 4473"),

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<https://www.atf.gov/file/61446/download>. If the answer is "yes," the putative transaction is prohibited.

On September 21, 2011, the ATF issued an "Open Letter to All Federal Firearms Licensees" (the "Open Letter") that stated the following:

[A]ny person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by Federal law from possessing firearms or ammunition. Such persons should answer "yes" to question 11.e. on ATF Form 4473 . . . and you may not transfer firearms or ammunition to them. Further, if you are aware that the potential transferee is in possession of a card authorizing the possession and use of marijuana under State law, then you have "reasonable cause to believe" that the person is an unlawful user of a controlled substance. As such, you may not transfer firearms or ammunition to the person, even if the person answered "no" to question 11.e. on ATF Form 4473.

Open Letter to all Federal Firearms Licensees dated Sept. 21, 2011, <https://www.atf.gov/files/press/releases/2011/09/092611-atf-open-letter-to-all-ffls-marijuana-for-medicinal-purposes.pdf>.

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It was against this regulatory and statutory context that appellant Wilson, on

May 12, 2011, was issued a marijuana registry card by the State of Nevada. A few months later, on October 4, 2011, Wilson sought to purchase a firearm from Custom Firearms & Gunsmithing in the small community of Moundhouse, Nevada. As Wilson began to fill out Form 4473, the owner of the store, Frederick Hauser, stopped her from completing Question 11.e, which asked whether Wilson was an unlawful user of a controlled substance. Hauser explained that, because (as Hauser already knew) Wilson held a marijuana registry card, Wilson was deemed an unlawful user of a controlled substance and therefore someone to whom he could not sell a firearm without jeopardizing his federal firearms license. Wilson handed Hauser Form 4473 with Question 11.e. left blank. Hauser, who had received the ATF Open Letter three days earlier, nonetheless refused to sell her a firearm. Wilson alleges that Hauser's refusal to sell her a firearm was a direct consequence of Hauser's receipt of the Open Letter.

On October 18, 2011, Wilson filed the present action against the Government and, on December 17, 2012, filed a First Amended Complaint (the "FAC"). Wilson asserted five causes of action: (1) violation of the Second Amendment, (2) violation of the Equal Protection Clause of the Fifth Amendment, (3) violation of the procedural Due Process Clause of the Fifth Amendment, (4) violation of the substantive Due Process Clause of the Fifth Amendment, and (5) violation of the First Amendment. Wilson sought declarations that 18 U.S.C. § 922(g)(3) and (d)(3), as well as all derivative regulations, such as 27 C.F.R. § 478.11, and the Open Letter, were unconstitutional. Wilson also sought a permanent injunction barring enforcement of § 922(g)(3) and (d)(3), all derivative regulations, and the Open Letter. Finally,

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Wilson sought compensatory and punitive damages, costs, fees, and expenses.

On January 31, 2013, the Government filed a motion to dismiss the FAC. In her opposition to Defendants' motion to dismiss, Wilson asserted that the Open Letter also violated the Administrative Procedure Act ("APA"). On March 11, 2014, the district court granted the Government's motion to dismiss the FAC. The district court also denied Wilson leave to amend the FAC to raise an APA claim, concluding that amendment would be futile. Wilson timely appealed.

DISCUSSION

We review *de novo* the district court's dismissal for failure to state a claim, and we review for abuse of discretion the denial of leave to amend. *Dougherty v. City of Covina*, 654 F.3d 892, 897 (9th Cir. 2011). We review *de novo* all constitutional rulings. *Fournier v. Sebelius*, 718 F.3d 1110, 1117 (9th Cir. 2013).

A.

As a preliminary matter, we address two jurisdictional issues:

First, as appellant's counsel conceded at oral argument, Wilson lacks standing to challenge 18 U.S.C. § 922(g)(3).²

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Standing requires, among other elements, a "concrete and particularized" injury that is "actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotation marks omitted). Section 922(g)(3) criminalizes possession or receipt of a firearm by a unlawful drug user or a person addicted to a controlled substance. Wilson has not alleged that she is an unlawful drug user or that she is addicted to any controlled substance. Nor has she alleged that she possessed or received a firearm. Accordingly, Wilson has not alleged that § 922(g)(3) has injured her in any way. For the same reasons, she also has not shown a "genuine threat of

imminent prosecution" under § 922(g)(3), as is generally required of plaintiffs raising pre-enforcement challenges to criminal statutes outside the First Amendment context. *San Diego Cty. Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996) (internal quotation marks omitted). Accordingly, we affirm on the ground of lack of standing the district court's dismissal of Wilson's claims concerning § 922(g)(3).

Wilson does have standing, however, to raise her remaining claims challenging 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter. Wilson alleges that § 922(d)(3)'s ban on sales of firearms to individuals whom sellers have reasonable cause to believe are drug users, along with the regulations and guidance implementing this ban, prevented her from purchasing a firearm. These allegations are sufficient to satisfy the injury requirement.

Second, contrary to the Government's suggestion, Wilson's remaining claims are not moot. We review the

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mootness of a case *de novo*. *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003). The Government's concern is that because Wilson has not renewed her registry card throughout her appeal, she is no longer injured by 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter. Although the FAC discusses only the registry card issued in May 2011, which expired in 2012, Wilson represents that she has routinely renewed her card. The Government has not challenged the accuracy of this representation. Because Wilson has appealed from a granted motion to dismiss and her representation simply updates the allegation in the FAC that she has a current registry card, we accept it as true for purposes of her appeal. *Cf. Warth v. Seldin*, 422 U.S. 490, 502 (1975).

B.

Wilson's first constitutional challenge to 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter purportedly rests on the Second Amendment. Specifically, Wilson claims that these provisions unconstitutionally burden her individual right to bear arms. *See District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). The district court concluded, however, that Wilson's Second Amendment challenge failed under our decision in *United States v. Dugan*, 657 F.3d 998 (9th Cir. 2011). In *Dugan*, we held that the Second Amendment does not protect the rights of unlawful drug users to bear arms, *id.* at 999-1000, in the same way that it does not protect the rights of "felons and the mentally ill," *Heller*, 554 U.S. at 626-27. The Government argues that if the Second Amendment does not protect the rights of unlawful drug users to bear arms, it must not protect any possible rights of unlawful drug users to purchase firearms or of firearm dealers to sell to unlawful drug users. Therefore, were Wilson an unlawful drug user, she would be beyond the

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reach of the Second Amendment, and her claims would fail categorically.

However, taking Wilson's allegations as true, as we must on an appeal from a motion to dismiss, *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987), she is not actually an unlawful drug user. Instead, she alleges that, although she obtained a registry card, she chose not to use medical marijuana for various reasons, such as the difficulties of acquiring medical marijuana in Nevada, as well as a desire to make a political statement.³ Regardless of her motivations, we agree that Wilson's claims do not fall under the direct scope of *Dugan*.⁴

This does not mean that her Second Amendment claim succeeds. We have adopted a two-step inquiry to determine whether a law violates the Second

Amendment. We ask (1) "whether the challenged law burdens conduct protected by the Second Amendment and (2) if so . . . apply an appropriate level of scrutiny." *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013). Following this approach, we apply

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intermediate scrutiny and uphold 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter.

i. Whether 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter Burden Protected Conduct

At *Chovan's* first step, we ask "whether the challenged law burdens conduct protected by the Second Amendment, based on a historical understanding of the scope of the [Second Amendment] right, or whether the challenged law falls within a well-defined and narrowly limited category of prohibitions that have been historically unprotected." *Jackson v. City & County of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014) (citations and internal quotation marks omitted). With respect to Wilson, this inquiry is straightforward: because Wilson insists that she is not an unlawful drug user, a convicted felon, or a mentally-ill person, she is not a person historically prohibited from possessing firearms under the Second Amendment. Accordingly, by preventing Wilson from purchasing a firearm, 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter directly burden her core Second Amendment right to possess a firearm, and we proceed to *Chovan's* second step.

ii. Which Level of Scrutiny Applies to 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter

The appropriate level of scrutiny for laws that burden conduct protected by the Second Amendment "depend[s] on (1) how close the law comes to the core of the Second

Amendment right and (2) the severity of the law's burden on the right." *Chovan*, 735 F.3d at 1138 (citing *Ezell v. City of Chicago*, 651 F.3d 684, 703 (7th Cir. 2011) (internal quotation marks omitted)). Application of the first prong is

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guided by "*Heller's* holding that the Second Amendment has 'the core lawful purpose of self-defense,' and that 'whatever else it leaves to future evaluation, [the Second Amendment] surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.'" *Jackson*, 746 F.3d at 961 (alteration in original) (quoting *Heller*, 554 U.S. at 630, 635). Here, as previously stated, 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter burden the core of Wilson's Second Amendment right because they prevent her from purchasing a firearm under certain circumstances and thereby impede her right to use arms to defend her "hearth and home." *Id.* (internal quotation marks omitted).

With respect to the second prong of the second *Chovan* step,

laws which regulate only the *manner* in which persons may exercise their Second Amendment rights are less burdensome than those which bar firearm possession completely. Similarly, firearm regulations which leave open alternative channels for self-defense are less likely to place a severe burden on the Second Amendment right than those which do not.

Id. (citations and internal quotation marks omitted). The burden on Wilson's core Second Amendment right is not severe. Title 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter bar only the sale of firearms

to Wilson-not her possession of firearms. Wilson could have amassed legal firearms before acquiring a registry card, and 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter would

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not impede her right to keep her firearms or to use them to protect herself and her home. In addition, Wilson could acquire firearms and exercise her right to self-defense at any time by surrendering her registry card, thereby demonstrating to a firearms dealer that there is no reasonable cause to believe she is an unlawful drug user.

Because 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter do not place a severe burden on Wilson's core right to defend herself with firearms, we apply intermediate scrutiny to determine whether these laws and guidance pass constitutional muster.

iii. Applying Intermediate Scrutiny to 18 U.S.C. § 922(d)(3), 27 C.F.R. 478.11, and the Open Letter

Intermediate scrutiny "require[s] (1) the government's stated objective to be significant, substantial, or important; and (2) a reasonable fit between the challenged regulation and the asserted objective." *Chovan*, 735 F.3d at 1139 (internal quotation marks omitted). Wilson concedes that the Government had a substantial interest in enacting § 922(d)(3) to prevent gun violence.⁵ However, she argues that the fit between 27 C.F.R. § 478.11 and the Open Letter, on the one hand, and violence prevention, on the other, is not reasonable because 27 C.F.R. § 478.11 and the Open Letter deprive so

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many non-violent people, such as Wilson, who hold registry cards for political reasons, of their Second Amendment rights.

The Government argues that empirical data and legislative determinations support a strong link between drug use and violence. As to the first, studies and surveys relied on in similar cases suggest a significant link between drug use, including marijuana use, and violence. *See United States v. Carter*, 750 F.3d 462, 466-69 (4th Cir. 2014) (citing and discussing four studies and two government surveys); *United States v. Yancey*, 621 F.3d 681, 686 (7th Cir. 2010) (per curiam) (citing all but one of the studies and surveys in *Carter*, plus one additional study). While it would have been helpful for the Government to provide the studies in this case, Wilson has not challenged their methodology. We therefore have no occasion to evaluate the reliability of the studies and surveys, and instead accept them as probative.

Moreover, legislative determinations also support the link between drug use and violence. In particular, Congress enacted 18 U.S.C. § 922(g)(3), which bars unlawful drug users from possessing firearms, "to keep firearms out of the hands of presumptively risky people." *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103, 112 n.6 (1983).⁶ It is beyond dispute that illegal drug users, including marijuana users, are likely as a consequence of that use to experience altered or impaired mental states that affect their judgment and that can lead to irrational or unpredictable behavior. *See Carter*, 750 F.3d at 469-70. They are also more likely to have negative interactions with law enforcement officers because

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they engage in criminal activity. *Id.* Finally, they frequently make their purchases through black market sources who themselves frequently resort to violence.

It may be argued that medical marijuana users are less likely to commit violent crimes, as they often suffer from debilitating illnesses, for which marijuana may be an effective

palliative. They also may be less likely than other illegal drug users to interact with law enforcement officers or make purchases through illicit channels.⁷ But those hypotheses are not sufficient to overcome Congress's reasonable conclusion that the use of such drugs raises the risk of irrational or unpredictable behavior with which gun use should not be associated.

By citing to the link between unlawful drug users and violence in this case, however, the Government incorrectly conflates registry cardholders with unlawful drug users. While these two categories of people overlap, they are not identical. The Government's showings of the link between drug use and violence would be sufficient were we applying intermediate scrutiny to 18 U.S.C. § 922(g)(3), which bars unlawful drug users from possessing firearms. But Wilson flatly maintains that she is not an unlawful drug user and is instead challenging a set of laws that bar non-drug users from purchasing firearms if there is only reasonable cause to believe that they are unlawful drug users, for instance, if they hold a registry card. Wilson correctly points out that the

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degree of fit between these laws and the ultimate aim of preventing gun violence is not as tight as the fit with laws like 18 U.S.C. § 922(g)(3), which affect only illegal drug users.

Nonetheless, the degree of fit between 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter and the aim of preventing gun violence is still reasonable, which is sufficient to survive intermediate scrutiny. The connection between these laws and that aim requires only one additional logical step: individuals who firearms dealers have reasonable cause to believe are illegal drug users are more likely actually to be illegal drug users (who, in turn, are more likely to be involved with violent crimes). With respect to marijuana registry cards, there may be some

small population of individuals who-although obtaining a marijuana registry card for medicinal purposes-instead hold marijuana registry cards only for expressive purposes. But it is eminently reasonable for federal regulators to assume that a registry cardholder is much more likely to be a marijuana user than an individual who does not hold a registry card.

Because the degree of fit between 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter and their purpose of preventing gun violence is reasonable but not airtight, these laws will sometimes burden-albeit minimally and only incidentally-the Second Amendment rights of individuals who are reasonably, but erroneously, suspected of being unlawful drug users. However, the Constitution tolerates these modest collateral burdens in various contexts, and does so here as well. For instance, the Fourth Amendment allows an officer to burden an individual's right to be free from searches when the officer has "reason to believe" the person is armed and dangerous, *see Terry v. Ohio*, 392 U.S. 1, 27 (1968), a standard comparable to the "reasonable cause to

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believe" standard of § 922(d). Moreover, as previously noted, there are various ways for individuals in Wilson's position to minimize or eliminate altogether the burdens that 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter place on their Second Amendment rights. Accordingly, 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter survive intermediate scrutiny, and the district court did not err in dismissing Wilson's Second Amendment claims.

C.

Wilson also claims that 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter violate the First Amendment. Wilson's

claim fails under long-standing First Amendment precedents.

i. Whether Wilson's Conduct is Protected by the First Amendment

We apply a two-pronged test, known as the *Spence* test, to determine when conduct contains sufficient elements of communication to fall within the scope of the First Amendment. First, we ask whether the "intent to convey a particularized message was present." *Texas v. Johnson*, 491 U.S. 397, 404 (1989) (quoting *Spence v. Washington*, 418 U.S. 405, 410-11 (1974) (per curiam)). Second, we ask whether "the likelihood was great that the message would be understood by those who viewed it." *Id.* (quoting *Spence*, 418 U.S. at 410-11).

Wilson argues that her acquisition of a registry card qualifies as expressive conduct protected by the First Amendment. She allegedly intended to convey a particularized message in support of medical use of marijuana

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and argues that in the midst of a hotly contested debate over the legalization of marijuana, viewers of the card would understand this message. The Government does not dispute that Wilson's acquisition of a registry card passes the *Spence* test, and we agree that, in the peculiar circumstances alleged, Wilson's acquisition of a registry card falls within the scope of conduct protected by the First Amendment. However, other actions that could give a firearms dealer reasonable cause to believe that Wilson, or another individual, was an unlawful drug user do not necessarily pass the *Spence* test and are not necessarily expressive. For that reason, Wilson's First Amendment claim rests only on her acquisition of a registry card.

ii. The Appropriate Level of Scrutiny

Courts apply strict scrutiny to laws that "proscribe particular conduct *because* it has expressive elements." *Johnson*, 491 U.S. at 406. "A law *directed at* the communicative nature of conduct must, like a law directed at speech itself, be justified by the substantial showing of need that the First Amendment requires." *Id.* (internal quotation marks omitted). But intermediate scrutiny applies when a law is directed at the non-communicative portion of conduct that contains both communicative and non-communicative elements: "[W]hen 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." *United States v. O'Brien*, 391 U.S. 367, 376 (1968).

Wilson argues that strict scrutiny must apply because the Open Letter was allegedly part of a campaign by the

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Government to crush the medical marijuana movement. She points to news reports that discuss a "crackdown" by the Government on state medical marijuana systems. As noted earlier, this hypothesis seems unlikely; all the federal government would have needed to do to "crush" the medical marijuana movement would have been to enforce the federal laws prohibiting marijuana possession as then interpreted,⁸ for the laws, as noted earlier, do not permit a medical exception. However, even accepting Wilson's allegations as true, they do not demonstrate that the Government targeted Wilson's expressive conduct of acquiring a registry card. They demonstrate only that the Government moved to enforce valid federal criminal statutes against the unauthorized acquisition or transfer of firearms by those who illegally use controlled substances. The production, distribution, and use of medical marijuana are not protected by the First Amendment, and efforts by the

Government to impede-or even eliminate altogether-the production, distribution, and use of medical marijuana are not evidence of any conspiracy against free speech. Likewise, the Government's efforts to reduce gun violence through 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter are not directed at the expressive portion of Wilson's acquisition of a registry card. Accordingly, any burden the Government's anti-marijuana and anti-gun-violence efforts place on Wilson's expressive conduct is incidental, and the less searching *O'Brien* standard applies here.

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iii. Applying the *O'Brien* Standard

Under *O'Brien*,

a government regulation is sufficiently justified [1] if it is within the constitutional power of the Government; [2] if it furthers an important or substantial governmental interest; [3] if the governmental interest is unrelated to the suppression of free expression; and [4] if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

O'Brien, 391 U.S. at 377. The Open Letter satisfies each of these conditions.

With respect to the first *O'Brien* condition, Wilson argues that the Open Letter is analogous to the Subversive Activities Control Act of 1950, which barred any member of designated Communist groups from employment in defense facilities and which the Supreme Court held violated the First Amendment in *United States v. Robel*, 389 U.S. 258 (1967). But *Robel* and its discussion of the freedom of association is

irrelevant to the question whether the Government may constitutionally regulate the sale and possession of firearms. It may indeed do so, and so the Open Letter meets the first *O'Brien* condition.

With respect to the second *O'Brien* condition, although Wilson concedes that preventing violent crime is an important interest, she argues that the Government has failed to show that the Open Letter furthers this interest. She points out that the Government has failed to marshal any evidence

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of the efficacy of the Open Letter in reducing gun violence, despite its being in effect since 2011. But the Government is not required to make such a specific showing in this context. Instead, our discussion of Wilson's Second Amendment claim suffices to show that the Open Letter furthers the aim of preventing gun violence. Registry cardholders are more likely to be marijuana users, and illegal drug users, including marijuana users, are more likely to be involved in violent crimes. See *Carter*, 750 F.3d at 466-69; *Yancey*, 621 F.3d at 683-84. Accordingly, preventing those individuals who firearm dealers know have registry cards from acquiring firearms furthers the Government's interest in preventing gun violence.

With respect to the third *O'Brien* condition, Wilson again argues that the purpose of the Open Letter was the suppression of support for medical marijuana. As discussed above, neither the Government's efforts to reduce gun violence nor its efforts to curtail marijuana use are related to the suppression of free expression.

With respect to the fourth *O'Brien* condition, Wilson argues that the incidental effect of the Open Letter on her First Amendment rights is greater than is essential to reduce gun violence. In particular, she

argues that the Open Letter places her on the horns of a constitutional dilemma: she must either surrender her Second Amendment right to possess a firearm or her First Amendment right to express her support for medical marijuana use. Wilson faces no such dilemma. The Open Letter burdens only a single form of expression in support of medical marijuana use—the holding of a registry card. Otherwise, Wilson may advocate vigorously and as publicly as she wishes for medical marijuana use while possessing firearms. Moreover, the burden that the Open

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Letter does place on this single form of expression is minimal. As explained above, Wilson may purchase firearms before acquiring or after surrendering a registry card. As a practical matter, Wilson is not caught in any dilemma, and the Open Letter's incidental effect on her First Amendment rights is no greater than necessary to reduce gun violence.

Because the Open Letter satisfies each of the *O'Brien* conditions, it survives intermediate scrutiny, and the district court did not err in dismissing Wilson's First Amendment claims.

D.

Wilson also raises Fifth Amendment claims against 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter. In particular, she argues that the Open Letter violates her procedural due process rights protected by the Due Process Clause of the Fifth Amendment and violates the Equal Protection Clause as incorporated into the Fifth Amendment.² These claims fail.

To begin with, Wilson's procedural due process rights have not been violated. "A procedural due process claim has

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two distinct elements: (1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections." *Brewster v. Bd. of Educ.*, 149 F.3d 971, 982 (9th Cir. 1998). Wilson argues that 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter deprive her of her liberty interest in simultaneously carrying a registry card and purchasing a firearm. She contends that this deprivation occurs without any process-only a determination that she holds a registry card. However, Wilson does not have a constitutionally protected liberty interest in simultaneously holding a registry card and purchasing a firearm. Moreover, she has failed to state a procedural due process claim, and the district court did not err in dismissing her claim.

Likewise, 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter do not violate the Equal Protection Clause. "The first step in equal protection analysis is to identify the state's classification of groups. . . . The next step in equal protection analysis would be to determine the level of scrutiny." *Country Classic Dairies, Inc. v. Mont., Dep't of Commerce Milk Control Bureau*, 847 F.2d 593, 596 (9th Cir. 1988). "[E]qual protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976) (*per curiam*) (footnote omitted).

Wilson argues that 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter disadvantage several groups, including registry cardholders versus users of medical marijuana in states where registry cards are not required. She also argues that she is being treated differently from other

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persons with similar medical conditions who have pursued other methods of treatment. None of these groups, however, is a suspect or quasi-suspect class. In addition, as discussed above, 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter do not impermissibly interfere with the exercise of any fundamental rights, including Wilson's right to possess firearms. Accordingly, we apply rational basis scrutiny.

Title 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter survive rational basis scrutiny because they are reasonably related to reducing gun violence, as explained above. Accordingly, the district court did not err in dismissing Wilson's Fifth Amendment claims.

E.

Wilson also claims that the Open Letter violated the APA. Wilson did not plead a specific cause of action for violations of the APA in the FAC,¹⁰ and the district court denied her leave to amend to do so, concluding that any such amendment would be futile. Wilson argues that the Open Letter violated the APA because it is a legislative rule that must go through notice-and-comment procedures under 5 U.S.C. § 553(b) & (c) but did not.

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Title 5 U.S.C. § 553(b)(3)(A) exempts "interpretative rules" and "general statements of policy" from the notice-and-comment requirement of agency rulemaking. The Supreme Court has described interpretive rules as materials "issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers." *Shalala v. Guernsey Mem'l Hosp.*, 514 U.S. 87, 99 (1995) (internal quotation marks omitted). We have stated that "interpretive rules merely explain, but do not add to, the substantive law that already exists in the form of a statute or legislative

rule. Legislative rules, on the other hand, create rights, impose obligations, or effect a change in existing law pursuant to authority delegated by Congress." *Hemp Indus. Ass'n v. DEA*, 333 F.3d 1082, 1087 (9th Cir. 2003) (citation omitted). Specifically, we have identified three circumstances when a rule has the "force of law" and is therefore legislative: "(1) when, in the absence of the rule, there would not be an adequate legislative basis for enforcement action; (2) when the agency has explicitly invoked its general legislative authority; or (3) when the rule effectively amends a prior legislative rule." *Id.* (citing *Am. Mining Cong. v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1109 (D.C. Cir. 1993)).

The first two *Hemp Industries* categories do not apply here: 18 U.S.C. § 922(d)(3) provides an adequate legislative basis for enforcement action even without the Open Letter, and the ATF did not explicitly invoke any legislative authority when it published the Open Letter.

Wilson argues that the Open Letter falls into the third *Hemp Industries* category because it effectively amended 27 C.F.R. § 478.11. Specifically, she argues that the Open Letter impermissibly expands 27 C.F.R. § 478.11's definition of an "unlawful user" of illegal drugs to include registry

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cardholders who use marijuana. Section 478.11 defines an unlawful user as "any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician." Wilson contends that, because a medical recommendation must be obtained to receive a marijuana registry card, a holder of a registry card who uses marijuana has not used a controlled substance in a manner other than as prescribed by a licensed physician. This is incorrect as a matter of federal law. Under 21 U.S.C. § 812, marijuana is a

Schedule I controlled substance, meaning that-as far as Congress is concerned-marijuana "has no currently accepted medical use in treatment[, and] there is a lack of accepted safety for use of the . . . substance under medical supervision." 21 U.S.C. § 812(b)(1)(B) & (C). No physician may legally prescribe marijuana as a matter of federal law, and no user of medical marijuana is using it "as prescribed by a licensed physician" within the meaning of 27 C.F.R. § 478.11.

Wilson also characterizes the Open Letter as making a blanket assertion that any individual with a registry card is a marijuana user. According to Wilson, this blanket assertion is made without any investigation or due process, and is therefore unlike the illustrations provided in 27 C.F.R. § 478.11 that assist others in determining when someone can reasonably be determined as using a "controlled substance in a manner other than as prescribed by a licensed physician."¹¹

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However, the Open Letter does not make a blanket assertion that all registry card users are marijuana users, it simply clarifies that a firearms dealer has "reasonable cause to believe" an individual is an unlawful user if she holds a registry card. This inference falls well within the scope of 27 C.F.R. § 478.11, which states that "[a]n inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time." A marijuana registry card is circumstantial evidence, although by no means dispositive evidence, of recent use or possession of marijuana. Moreover, it is immaterial that registry cards are different from the illustrations mentioned in 27 C.F.R. § 478.11 that may raise an inference of unlawful drug use. Helpful examples in regulations need not be exhaustive. Indeed, that is one reason agencies publish guidance

like the Open Letter-to provide additional examples that "explain, but do not add to, the substantive law that already exists in the form of a statute or legislative rule." *Hemp Indus.*, 333 F.3d at 1087. Accordingly, we agree with the district court that the Open Letter is "textbook interpretative" and that it was exempt from notice-and-comment procedures under 5 U.S.C. § 553(b)(3)(A). The district court did not err in dismissing Wilson's APA claim, to the extent it was pleaded, or in denying Wilson leave to amend her complaint to expand her APA claim.

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CONCLUSION

For the foregoing reasons, the judgment of the district court is

AFFIRMED.

Footnotes:

^{*} The Honorable Jed S. Rakoff, Senior United States District Judge for the Southern District of New York, sitting by designation.

^{**} This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

¹ As we recently observed: "The [Controlled Substances Act] prohibits the manufacture, distribution, and possession of marijuana. Anyone in any state who possesses, distributes, or manufactures marijuana for medical or recreational purposes (or attempts or conspires to do so) is committing a federal crime." *United States v. McIntosh*, No. 15-10117, 2016 WL 4363168, at *11 n.5 (9th Cir. Aug. 16, 2016).

² Neither party challenged the district court's determination that Wilson had standing, but we have an independent

obligation "to examine jurisdictional issues such as standing [*sua sponte*]." *B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999). We review questions of standing *de novo*. *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1087 (9th Cir. 2010).

³ Wilson argues that, in light of the active political movements to decriminalize the use of marijuana in some states, her stance as a non-using registry cardholder allows her to express her support for marijuana legalization in a particularly meaningful way.

⁴ *Dugan* does, however, dispose of Wilson's Second Amendment claims against 18 U.S.C. § 922(d)(3), 27 C.F.R. § 478.11, and the Open Letter to the extent that they are facial, as distinct from as-applied, challenges. Under *Dugan*, there is no question that § 922(d)(3) could be enforced constitutionally, pursuant to 27 C.F.R. § 478.11 and the Open Letter, against a dealer who knowingly sold a firearm to a registry cardholder who was actively using marijuana.

⁵ Wilson also argues that the purpose of the Open Letter was to crush the medical marijuana movement. On its face, the Open Letter serves no such purpose, and Wilson has not substantiated her suspicions with any facts. In addition, if the Government had wished to oppose the medical marijuana movement, it would not have needed the Open Letter—it would have needed merely to enforce existing federal statutes as then interpreted. *See* 21 U.S.C. § 812. (*But see* footnote 7, *infra*.)

⁶ A majority of states have enacted similar restrictions on possession of firearms by habitual illegal drug users. *See Yancey*, 621 F.3d at 683-84 (citing twenty-six state statutes and a District of Columbia statute).

⁷ *See McIntosh*, 2016 WL 4363168, at *9-10 (holding that the United States Department of Justice is prohibited under a congressional appropriations rider from

prosecuting individuals who are engaged in conduct permitted by state medical marijuana laws and who fully comply with such laws).

⁸ Of course, Congress would have to restore funding for the prosecution of marijuana offenses before the federal government could enforce the laws prohibiting possession. *See McIntosh*, 2016 WL 4363168, at *11 & n.5

⁹ Wilson also raised substantive due process claims in the district court, but she addresses their dismissal in conclusory fashion on appeal, arguing only that she stated a substantive due process claim because of her fundamental right to choose a course of medical treatment. This argument is foreclosed by our decision in *Raich v. Gonzales*, 500 F.3d 850, 866 (9th Cir. 2007) ("[F]ederal law does not recognize a fundamental right to use medical marijuana prescribed by a licensed physician to alleviate excruciating pain and human suffering."). Accordingly, the district court did not err in dismissing Wilson's substantive due process claim or in denying her leave to amend it.

¹⁰ Wilson argues that, although she did not set out her APA claim as formally as her other claims, she nonetheless adequately pleaded a violation of the APA under Federal Rule of Civil Procedure 8(a)'s notice pleading standard. We do not reach this issue because Wilson's APA claim fails regardless of whether it was properly pleaded under Rule 8(a). In other words, the district court did not abuse its discretion in denying Wilson leave to correct any deficiency in her pleading of her APA claim because any such amendments would be futile.

¹¹ Wilson points to the following instances identified in 27 C.F.R. § 478.11 as examples of conduct or behavior that may raise an inference of current use of a controlled substance:

a conviction for use or possession of a controlled

substance within the past year;
multiple arrests for such
offenses within the past 5 years
if the most recent arrest
occurred within the past year;
or persons found through a drug
test to use a controlled
substance unlawfully, provided
that the test was administered
within the past year.

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