

office of the attorney general Washington, DC:. 20530

January 31, 2005

MEMORANDUM FOR THE DIRECTOR, BUREAU OF ALCOHOL, TOBACCO,
FIREARMS, AND EXPLOSIVES
THE ADMINISTRATOR, DRUG ENFORCEMENT
ADMINISTRATION
THE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
THE DIRECTOR, FEDERAL BUREAU OF PRISONS THE
INSPECTOR GENERAL
THE DIRECTOR, UNITED STATES MARSHALS SERVICE

FROM: THE ATTORNEY GENERAL

SUBJECT: GUIDANCE ON THE APPLICATION OF THE
LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2004
TO CURRENT AND RETIRED DEPARTMENT OF
JUSTICE LAW ENFORCEMENT OFFICERS

On July 22, 2004, Congress passed and the President signed the Law Enforcement Officers Safety Act of 2004 (the "Act"), Pub. L. No. 108-277, 118 Stat. 865 (2004), codified at 18 U.S.C. §§ 926B and 926C. With certain limitations and conditions, the Act exempts active and retired "qualified law enforcement officers" ("qualified LEOs") from state laws and local ordinances prohibiting the carrying of concealed weapons. The Act does not purport to affect any state or local laws and ordinances that permit restrictions of concealed firearms on private property or any such laws that restrict the possession of firearms on any State or local government property, installation, building, base, or park.

This memorandum outlines the Act's application to current and retired Department of Justice LEOs. The Department recognizes that individuals who meet the definition of a qualified LEO under the Act may or may not meet the definition of an LEO under the Civil Service Retirement System or the Federal Employee Retirement System. The guidance set forth below is not intended to and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person. Nothing in the Act or this memorandum impairs or otherwise affects the right of an individual to keep and bear arms under the Second Amendment to the Constitution of the United States.

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The Act's Application to Current Department Law Enforcement Officers

With respect to current law enforcement officers, the Act provides as follows:

- "(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).
- (b) This section shall not be construed to supersede or limit the laws of any State that--
- (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or
 - (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.
- (c) As used in this section, the term 'qualified law enforcement officer' means an employee of a governmental agency who--
- (1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;
 - (2) is authorized by the agency to carry a firearm;
 - (3) is not the subject of any disciplinary action by the agency;
 - (4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
 - (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
 - (6) is not prohibited by Federal law from receiving a firearm.
- (d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer."

118 Stat. at 865-66.

As these provisions make clear, an active qualified LEO under the Act is a current government agency employee who (1) is authorized to perform the specified law enforcement functions *and* holds a position for which powers of arrest are granted by statute; (2) is authorized to carry a firearm by the agency for which he or she works; (3) is not the subject of disciplinary action; (4) meets any standards set by the employing

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agency that require the employee to regularly qualify in the use of a firearm; (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; (6) is not prohibited by Federal law from receiving a firearm; and (7) carries a photo identification issued by the agency. For purposes of the last factor, the Department considers a current, valid "U.S. Government Employee" photographic identification card or a Department-issued credential to constitute "the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer." Should any questions arise concerning the application of these qualification provisions, the determination made by the head of the relevant Department component or his designee shall be subject to review by the Deputy Attorney General.

The Act has no effect on the requirement of any Department law enforcement components that agents or officers carry a firearm at all times. Similarly, any component's regulations or procedures with respect to on-duty agents or officers will continue to be in effect. Those requirements, regulations, and procedures separately remain in effect, notwithstanding any provision of the Act.

It is important to note that the Act does not supersede existing agency regulations or policies limiting, restricting, conditioning, or otherwise affecting the carrying of concealed firearms. The Act does preempt and supersede inconsistent state laws and local ordinances, whether criminal or civil. It does not prohibit any component from taking any appropriate disciplinary action for any violation of its existing regulations or policies.

The Department considers the following components to be agencies whose current employees may qualify as LEOs for purposes of the Act: the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Drug Enforcement Administration; the Federal Bureau of Investigation; the Federal Bureau of Prisons; the Office of the Inspector General; and the United States Marshals Service. Of course, any particular employee of one of these components independently must meet each of the specified statutory qualifications to qualify as an LEO under the Act.

II. The Act's Application to Retired Department Law Enforcement Officers

With respect to retired law enforcement officers, the Act provides as follows:

"(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

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- (b) This section shall not be construed to supersede or limit the laws of any State that--
 - (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or
 - (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

- (c) As used in this section, the term 'qualified retired law enforcement officer' means an individual who--
 - (1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;
 - (2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
 - (3) (A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more;
or
(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;
 - (4) has a nonforfeitable right to benefits under the retirement plan of the agency;
 - (5) during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;
 - (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
 - (7) is not prohibited by Federal law from receiving a firearm.

- (d) The identification required by this subsection is--
 - (1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or
 - (2) (A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and

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- (B) a certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.
- (e) As used in this section, the term `firearm' does not include--
 - (1) any machinegun (as defined in section 5845 of the National Firearms Act);
 - (2) any firearm silencer (as defined in section 921 of this title); and
 - (3) a destructive device (as defined in section 921 of this title)."

118 Stat. at 866-67.

Under these provisions, a person is a retired qualified LEO under the Act if he or she (1) retired in good standing from his or her employing agency (other than for reasons of mental instability); (2) was authorized to perform the specified law enforcement functions *and* held a position for which powers of arrest were granted by statute; (3) was regularly employed as a law enforcement officer for an aggregate of 15 years or more before his or her retirement, *or* retired from service with his or her agency (after completing any applicable probationary period of such service) due to a service-connected disability as determined by the agency; (4) has a non-forfeitable right to retirement plan benefits of the law enforcement agency; (5) during the most recent year, has met state firearms training and qualifications that are the same as the training and qualifications for active duty officers; (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; (7) is not prohibited by Federal law from receiving a firearm; (8) carries a photo identification issued by the agency; and (9) meets an annual qualification requirement.

The Department considers the following components to be agencies whose retired employees may qualify as LEOs for purposes of the Act: the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Drug Enforcement Administration; the Federal Bureau of Investigation; the Federal Bureau of Prisons; the Office of Inspector General, insofar as the retiree exercised statutory law enforcement authority at the time of his retirement; and the United States Marshals Service. As with current employees, any particular retired employee of one of these components independently must meet each of the specified statutory qualifications to qualify as a retired LEO under the Act.

Each affected component separately shall prepare and issue a photographic identification card for qualified retired LEOs. Each such identification card shall, at a

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minimum, include the name of the individual, the individual's photograph, an identification number traceable to the bearer, the date the employee retired in good standing from service with the issuing agency, and the phrase "Retired Law Enforcement Officer."

Individual components shall not themselves train or qualify retired employees to carry a firearm, as authorized under the law. In order to be authorized under the Act to carry a firearm, a retired qualified LEO from a DOJ component must qualify pursuant to 18 U.S.C. § 926C(d)(2)(B), and in accordance with state standards for active LEOs.

It shall be within the discretion of the employing agency to issue the retired LEO credential called for under the Act. Should the agency (1) make a finding that the subject is not qualified, or (2) enter into an agreement in which the subject agrees that he or she is not qualified, the subject shall not be issued the retired LEO credential described above.

With respect to the Act's limitation that a qualified retired LEO "is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance," each former Department employee seeking such qualification annually must meet state standards, if any, regarding alcohol or drug use by law enforcement officers authorized to carry a firearm.