

THE LAW ENFORCEMENT OFFICERS SAFETY ACT INSTRUCTION

I. Purpose

This Instruction implements the Department of Homeland Security (DHS) Directive 257-01, Rev. 1 “Law Enforcement Officers Safety Act” and establishes the procedures with respect to qualified retiring, retired, separated and separating law enforcement officers¹ and the application of the relevant provisions of the Law Enforcement Officers Safety Act (LEOSA), as amended.

II. Scope

This Instruction applies throughout the Department of Homeland Security (DHS) to “qualified retired law enforcement officers” as set forth in LEOSA. This Instruction applies to DHS Components' handling of LEOSA matters with such individuals who meet the definition of a “qualified retired law enforcement officer” who have retired or separated from DHS Components since DHS was formed in 2003; with future such individuals; and with such individuals from predecessor agencies when these individuals make LEOSA inquiries with appropriate DHS successor Components.

III. Authorities

- A. Title 18, United States Code (U.S.C.) § 926C, “Carrying of Concealed Firearms by Qualified Retired Law Enforcement Officers” [Law Enforcement Officers Safety Act of 2004, as amended]
- B. Title 18, U.S.C. § 922, “Unlawful Acts”

¹ The 2017 DHS Lexicon defines a law enforcement officer as: Position occupied by an employee who is authorized by statute to enforce the laws of the United States, carry firearms, and make criminal arrests in the performance of their assigned duties. Includes designated U.S. Coast Guard officers and members.

IV. Background

A. The Law Enforcement Officers Safety Act of 2004 (hereinafter "LEOSA" or "the Act") was signed into law July 22, 2004, and amended by the Law Enforcement Officers Safety Act Improvements Act of 2010 and the National Defense Authorization Act of 2013. With certain limitations and conditions, LEOSA exempts qualified retired and separated law enforcement officers from most state and local laws that prohibit the carriage of concealed firearms; this section of LEOSA is codified in 18 U.S.C. § 926C. LEOSA extends this exemption to any "qualified retired law enforcement officer," as that term is defined by the Act, including local, state, tribal and federal law enforcement personnel. However, LEOSA does not exempt these individuals from other federal laws or regulations, including any restrictions on firearms carriage on transportation systems such as commercial airlines, nor does it extend to these individuals any authority for the use of firearms or any law enforcements powers.

B. LEOSA preempts state and local laws prohibiting the carrying of concealed firearms with respect to qualified retired law enforcement officers with two exceptions: LEOSA is not to be construed to supersede or limit state laws 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.

V. Definitions

For the purposes of this Instruction and accompanying Directive:

A. **Identification**: Consistent with the provisions of LEOSA at 18 U.S.C. § 926C(d) "identification" refers to:

1. A photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer and 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 active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or
2. A photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer; and

A certification issued by the state in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the state or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state to have met –

(1) The active duty standards for qualification in firearms training, as established by the state, to carry a firearm of the same type as the concealed firearm; or

(2) If the state has not established such standards, standards set by any law enforcement agency within that state to carry a firearm of the same type as the concealed firearm.

B. ***Qualified Retired Law Enforcement Officer.*** The Department recognizes that the definition of who is a qualified retired law enforcement officer under LEOSA is separate and distinct from the definition of a law enforcement officer under the Civil Service Retirement System or the Federal Employees Retirement System. Consistent with the provisions of LEOSA at 18 U.S.C. § 926C(c), and for the purposes of this Instruction and corresponding Directive (No. 257-01), a “qualified retired law enforcement officer” is a law enforcement officer who:

1. Separated from service in good standing from service with a public agency as a law enforcement officer;
2. Before such separation, 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 or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);
3. Before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or separated 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. During the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the state in which the individual resides or, if the state has not established such standards, either a law enforcement agency within the state in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state;
5. Has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in V. A.; or has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in V. A.;
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.

It is the policy of DHS that an individual who served as a law enforcement officer for a total aggregate of 10 years and meets the criteria above, who then transfers, retires or separates from his or her law enforcement position, is eligible under LEOSA. This includes if the individual converts to a non-law enforcement position within the same or another Component or agency.

C. **Those Prohibited by Federal Law from Receiving or Possessing a Firearm:** Certain individuals who are prohibited under 18 USC § 922 (g) and (n) and other federal or state law from possessing or receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

VI. Responsibilities

A. The **Under Secretary for Strategy, Policy and Plans** provides oversight of DHS policies related to LEOSA.

B. **Component heads** that have qualified retired law enforcement officers are responsible for implementing this Instruction within their respective Components. This includes coordinating any Component-developed LEOSA policy with the Office of Policy, Law Enforcement Policy and the Office of the General Counsel for concurrence, as well as establishing a file for each qualified retired law enforcement officer.

VII. Content and Procedures

A. In accordance with Component-specific procedures to be developed by each Component, each Component is to issue or make available three documents to its law enforcement officers who have previously retired or separated from the Component, a law enforcement position in the Component, or a law enforcement position within the Component's predecessor agencies, and who make inquiries about LEOSA, as well as those law enforcement officers about to retire or separate from a law enforcement position, or reposition into a non-law enforcement position:

1. A copy of the statute (18 U.S.C. § 926C);
2. The factors that would prevent an individual from receiving or possessing a firearm under federal law (18 U.S.C. § 922); and
3. LEOSA Fact Sheet (or similar informational document). See Appendix A.

B. The LEOSA Fact Sheet:

1. Includes information regarding LEOSA provisions exempting qualified retired law enforcement officers from certain state and local statutes prohibiting the carrying of concealed weapons.
2. Includes notice that LEOSA contains no exemption from federal statutes and regulations relating to the carrying of firearms aboard commercial aircraft and that LEOSA does not confer upon qualified retired law enforcement officers any law enforcement status or arrest powers.
3. Sets out the list of requirements to be considered a qualified retired law enforcement officer under LEOSA as well as the list of conditions that would result in a retiring or separating law enforcement officer or agent being prohibited by federal law from receiving or possessing a firearm.

4. Cautions retiring and separating law enforcement officers that if at any time they no longer meet the definition of a “qualified retired law enforcement officer,” or they fall within one of the categories of individuals prohibited by federal law from receiving or possessing a firearm, they are no longer covered by LEOSA provisions or exemptions and must notify their Component immediately.

5. Makes clear that, based upon Component-specific procedures, the "photographic identification" referred to in LEOSA are either the credentials that law enforcement officers who retire or separate in good standing are allowed to retain when they retire or separate (stamped or perforated, such as with the word "Retired" or "Separated"), or a LEOSA-specific retired identification credential (commonly referred to as “LEOSA identification cards”). If applicable, the Fact Sheet includes Component instructions on how individuals request the LEOSA-specific identification.

6. Makes clear that a qualified retired law enforcement officer obtains any necessary certification and identification as described in section V.A. of this Instruction. It is the individual's responsibility to determine, as appropriate, the requirements of his or her state of residence regarding such certifications.

7. Makes clear that as a general matter, DHS Components do not perform or assist with annual firearms testing for LEOSA applicants. However, the Federal Law Enforcement Training Center (FLETC), under its authority to provide assistance to state, local, rural, and tribal law enforcement departments through the utilization of FLETC firearms training facilities, may do so on a space available basis and without impeding the FLETC’s primary mission.

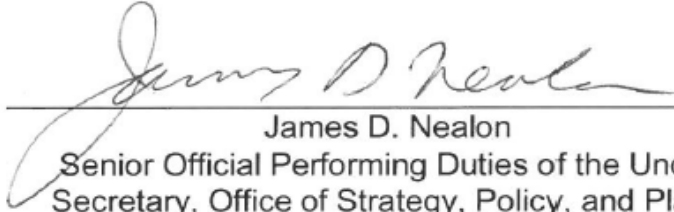
8. Emphasizes the importance of the qualified retired law enforcement officer having their "photographic identification" and, if applicable, up-to-date annual state firearms testing certification in their possession at all times they are carrying a concealed firearm under the authority of LEOSA.

C. It is within the discretion of DHS and its Components to determine whether to issue LEOSA-specific photographic identification referenced in the Act or authorize for LEOSA purposes the use of any currently issued law enforcement credentials (stamped or perforated, such as with the word "Retired" or "Separated").

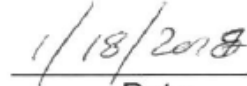
1. Where a Component elects not to issue additional LEOSA identification cards to qualified retired or separated law enforcement officers who, based upon their retiring or separating in good standing, were allowed to retain their active-service credentials (stamped or perforated, such as with the word "Retired" or "Separated"), the correlating Fact Sheet informs the individuals that their stamped/perforated credentials satisfy the photographic identification requirement, and that the individual need only obtain the annual state firearms testing certification to be covered by LEOSA, provided that they meet all the other requirements of LEOSA as set out in the statute and as highlighted in the Fact Sheet.
2. Where a Component elects to issue additional LEOSA identification cards to qualified retired or separated law enforcement officers, the Fact Sheet includes Component-specific instructions for requesting such cards. Components retain the discretion to require a qualified retired law enforcement officer to submit supporting documentation including results of up-to-date criminal history checks and to undergo further vetting.
3. Components establish standards for denying issuance of an identification card. Should the Component make a finding that the subject is not qualified, or if the subject agrees that he or she is not qualified, the Component does not issue the identification described above. Any appeal concerning an individual's eligibility for an identification credential is resolved at the Component level.
4. If the retired or separated law enforcement officer believes that the records relied on by the Component to make its determination were not correct, the individual can, consistent with the Privacy Act, 5 U.S.C. § 552a, seek the records which formed the basis of the finding and request that the Component correct the records if the individual believes the records to be inaccurate. Any request for records corrections are in accordance with the Component's established policies and procedures for correcting records. The resolution of any correction is made at the Component level.

VIII. Questions

Address any questions regarding this Instruction to the Office of Policy. This Instruction Guide contains one appendix, Appendix A: Sample LEOSA Fact Sheet.



James D. Nealon
Senior Official Performing Duties of the Under
Secretary, Office of Strategy, Policy, and Plans



Date

APPENDIX A: SAMPLE LEOSA FACT SHEET

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

LEOSA is a federal statute that preempts state law. It exempts a “qualified retired law enforcement officer” (see the definition below) who is carrying the required “identification” (see the definition below) from most (but not all) state and local laws that prohibit the carrying of concealed weapons. It is important to note that LEOSA does not exempt qualified retired or separated law enforcement officers from federal statutes and regulations (to include those relating to firearms aboard commercial aircraft).

A. A **Qualified Retired Law Enforcement Officer**, consistent with the provisions of LEOSA at 18 U.S.C. § 926C(c), a “qualified retired law enforcement officer” is an individual who:

1. Separated from service in good standing from service with a public agency as a law enforcement officer;
2. Before such separation, 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 or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);
3. Before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or separated 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. During the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the state in which the individual resides or, if the state has not established such standards, either a law enforcement agency within the state in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state;

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5. Has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described below; or has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described below;

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.

B. Consistent with the provisions of 18 U.S.C. § 922, **Those Prohibited by Federal Law from Receiving or Possessing a Firearm** include but are not limited to, any person who:

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

2. Is a fugitive from justice;

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

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

5. Has been discharged from the Armed Forces under dishonorable conditions;

6. Having been a citizen of the United States, has renounced U.S. citizenship;

7. Is subject to a court order that:

a. Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

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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. (A) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (B) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

8. Has been convicted in any court of a misdemeanor crime of domestic violence; or

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

It is important to note that qualified retired law enforcement officers who either now or at some future time no longer meet any one of the requirements in LEOSA, or become subject to any one of the prohibitions set forth above, would no longer be covered under LEOSA and notify their Component immediately.

Under 18 U.S.C. § 926C(d), **Identification** required by LEOSA is defined as:

A. A photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer and 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 active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or

B. A photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer; and

A certification issued by the state in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the state or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state to have met –

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1. The active duty standards for qualification in firearms training, as established by the state, to carry a firearm of the same type as the concealed firearm; or
2. If the state has not established such standards, standards set by any law enforcement agency within that state to carry a firearm of the same type as the concealed firearm.

As a general matter, DHS Components are not to perform or assist with annual firearms testing for their retirees or separated officers. However, the Federal Law Enforcement Training Center (FLETC), under its authority to provide assistance to state, local, rural, and tribal law enforcement departments through the utilization of FLETC firearms training facilities, may do so.

Retired and separated officers are reminded that in order to lawfully carry a concealed firearm under LEOSA:

- A. They must have their DHS Component (or predecessor agency) "photographic identification" **and** up-to-date annual state firearms testing certification as required **in their possession at all times when they are carrying a concealed firearm under the authority of LEOSA.**
- B. They must remain in compliance with all of the other requirements (set out above) of the Act concerning being a "qualified retired law enforcement officer" who is not "prohibited by federal law from receiving a firearm."
- C. The required DHS Component (or predecessor agency) "photographic identification" is only for the purpose of identifying them as being a retired or separated law enforcement officer from that Component or former agency. This identification and LEOSA do not:
 1. Confer law enforcement status;
 2. Confer arrest authority; or
 3. Authorize qualified retired law enforcement officers to engage in any law enforcement activities or investigations.