DEPARTMENT OF THE NAVY
HUMAN RESOURCE SERVICE CENTER
SOUTHEAST REGION
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12300
Code 53/4-204
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From: Human Resources Service Center Southeast, Code 50 Customer Focused Division
To: Applicants for Positions Required to Possess, Ship, Transport or Receive Firearms and/or Ammunition

Subj: DOMESTIC VIOLENCE MISDEMEANOR AMENDMENT TO THE GUN CONTROL ACT FOR DEPARTMENT OF THE NAVY CIVILIAN PERSONNEL

Ref: (a) OCHR memo of 18 Mar 03, Ser 012/091-03 w/encl
(b) Under Secretary of Defense memo of 27 Nov 02

Encl: (1) DD Form 2760, Qualification to Possess Firearms or Ammunition

1. The purpose of this memorandum is to inform you of the Domestic Violence Misdemeanor Amendment to the Gun Control Act of 1968, and explain how it impacts you as an applicant for federal employment. Reference (a) provides the Department of the Navy (DON) and Department of Defense (DoD) implementing policy and guidance.

2. The domestic violence amendment to the Gun Control Act of 1968, more commonly referred to as the Lautenberg Amendment, made it illegal for anyone convicted of a misdemeanor crime of domestic violence to possess, ship, transport or receive any firearm or ammunition; and made it a felony for any person to sell or dispose of firearms or ammunition to any person known or reasonably believed to have been convicted of a misdemeanor crime of domestic violence. Additionally, on 27 November 2002, the Department of Defense (DoD) issued policy that extended those prohibitions to anyone convicted of a "felony crime of domestic violence" adjudged on or after 27 November 2002.

3. Positions covered by this amendment, referred to as "covered positions," are identified as positions that include duties, activities, or responsibilities covered by the Gun Control Act, including selling or disposing of firearms and ammunition, or receiving, possessing, shipping or transporting any firearm or ammunition in or affecting interstate or foreign commerce. **You have been tentatively selected for a covered position.**

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4. A "misdemeanor crime of domestic violence" means an offense classified as a misdemeanor under State or Federal law which has, as its factual basis, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by the victim's current or former domestic partner, parent, or guardian. The term "convicted" includes any general or special court-martial conviction for a Uniform Code of Military Justice offense, but does not include nonjudicial punishment (Article 15,UCMJ action) or a summary court-martial conviction. The term also excludes anyone whose conviction has been expunged or been set aside, or has received a pardon. A copy of the DON policy is provided at enclosure (1) and includes definitions of the terms used in the statute and the policy statement. Please read it carefully.

5. This provision applies to persons convicted of misdemeanor crimes of domestic violence at any time, prior to or after the passage of the 30 September 1996 law. There is no exemption for law enforcement officers and agents. If you have ever been convicted of a misdemeanor crime of domestic violence within the meaning of the statute, or a have been convicted of a felony crime of domestic violence adjudged on or after 27 November 2002, you may not be appointed to a covered position.

6. You are required to complete the form in enclosure (2) and provide it to the Human Resources Office when you check in. A final decision on your selection for this covered position cannot be made until you have provided this form. A qualifying conviction will disqualify you for the covered position. Additionally, providing false or inaccurate **information on enclosure** (2) will result in future disciplinary action, which may include removal from Federal service.

7. If you are appointed to this covered position, you will have an affirmative duty on an on-going basis to notify your supervisor if you have or believe you may have a qualifying conviction. You are required to immediately notify your supervisor if you receive a qualifying conviction in the future.

_____ _____

(Signature of Employee) (Date)

QUALIFICATION TO POSSESS FIREARMS OR AMMUNITION

PRIVACY ACT STATEMENT

AUTHORITY: 18 U.S.C. 922(g)(9); E.O. 9397.

PRINCIPAL PURPOSE(S): To obtain information to determine if you have been convicted of a crime of domestic violence which would disqualify you from shipping, transporting, possessing or receiving either Government-issued or private firearms or ammunition and to determine if reassignment, reclassification, detail or other administrative action is warranted. Your Social Security Number is solicited solely for purposes of verifying your identity.

ROUTINE USE(S): To the Department of Justice so that such information can be included in the National Instant Criminal Background Check System which may be used by firearm licensees (importers, manufacturers or dealers) to determine whether individuals are qualified to receive or possess firearms and ammunition.

DISCLOSURE: Mandatory for all personnel who are required to certify. Failure to provide the information may result in (1) (military only) the imposition of criminal or administrative penalties for failing to obey a lawful order, and (2) (civilian only) the imposition of administrative penalties, to include removal from Federal service. However, neither your answers nor information or evidence gained by reason of your answers can be used against you in any criminal prosecution for a violation of Title 18, United States Code, Section 922(g)(9), including (military only) prosecutions under the Uniform Code of Military Justice, based on a violation of Section 922(g)(9), for conduct which occurred prior to the completion of this form. The answers you furnish and any information resulting therefrom, however, may be used against you in a criminal or administrative proceedings if you knowingly and willfully provide false statements or information.

SECTION I - INSTRUCTIONS

An amendment to the Gun Control Act of 1968 (18 U.S.C. 922) makes it a felony for anyone who has been convicted of a misdemeanor crime of domestic violence to ship, transport, possess, or receive firearms or ammunition. It is also a felony for any person to sell or otherwise dispose of a firearm to any person so convicted.

The Department of Defense has, by policy, expanded the prohibitions contained in Title 18 Section 922(g)(9) to those military or civilian personnel who have felony convictions for crimes of domestic violence. Convictions of crimes of domestic violence do not include summary court-martial convictions, the imposition of nonjudicial punishment (Article 15, UCMJ), or deferred prosecutions (or similar alternative dispositions) in civilian courts. Furthermore, a person shall not be considered as having committed a "crime of domestic violence" for purposes of the firearms restriction of the Gun Control Act unless all of the following elements are present:

(1) the person was convicted of a crime;

(2) the offense has as its factual basis the use or attempted use of physical force, or threatened use of a deadly weapon;

(3) the convicted offender was at the time of the offense:
- (a) a current or former spouse, parent or guardian of the victim,
- (b) a person with whom the victim shared a child in common,
- (c) a person who was cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or
- (d) a person who was similarly situated to a spouse, parent, or guardian of the victim;

(4) the convicted offender was represented by counsel, or knowingly and intelligently waived the right to counsel;

(5) if entitled to have the case tried by jury, the case was actually tried by jury or the person knowingly and intelligently waived the right to have the case tried by jury;

(6) the conviction has not been expunged or set aside, or the convicted offender has not been pardoned for the offense or had civil rights restored, unless the pardon, expungement, or restoration of civil rights provides that the person may not ship, transport, possess or receive firearms.

If you have ever received a domestic violence conviction: (1) you may not possess any firearm or ammunition; and (2) you must return any Government-issued firearm or ammunition to your commander or immediate supervisor; and (3) you must take steps to relinquish possession of any privately owned firearms or ammunition. Furthermore, any previously issued authorization to possess a firearm or ammunition is revoked.

If you have any questions, or you are uncertain if you have such a conviction, you may wish to contact a legal assistance attorney, if eligible, or a private attorney, at your own expense.

SECTION II - QUALIFICATION INQUIRY *(Complete and return to your commander or immediate supervisor within 10 days of receipt)*

1. HAVE YOU EVER BEEN CONVICTED OF A CRIME OF DOMESTIC VIOLENCE AS DESCRIBED ABOVE: *(Initial and date)*

YES	NO	I DON'T KNOW *(Provide explanation on reverse)*

2. IF YOU ANSWERED "YES" TO THE FIRST QUESTION, PROVIDE THE FOLLOWING INFORMATION WITH RESPECT TO THE CONVICTION:

a. COURT/JURISDICTION	b. DOCKET/CASE NUMBER
c. STATUTE/CHARGE	d. DATE SENTENCED *(YYYYMMDD)*

3. CERTIFICATION. I hereby certify that, to the best of my information and belief, all of the information provided by me is true, correct, complete, and made in good faith. I understand that false or fraudulent information provided herein may be grounds for criminal and/or administrative proceedings, to include (if civilian) adverse action, up to and including removal, and (if military) disciplinary action under the Uniform Code of Military Justice. I further understand that I have a continuing obligation to inform my Commander or Supervisor should I be convicted of a crime of domestic violence in the future.

a. NAME *(Last, First, Middle Initial)*	b. RANK/GRADE	c. SOCIAL SECURITY NUMBER
d. ORGANIZATION	e. SIGNATURE	f. DATE SIGNED *(YYYYMMDD)*