

Department of Treasury
Bureau of Alcohol, Tobacco, and Firearms
TD ATF-391

Definitions for the Categories of Persons Prohibited From
Receiving Firearms (95R-051P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of
the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending
the regulations to provide definitions for the categories of persons
prohibited from receiving or possessing firearms. The definitions will
facilitate the implementation of the national instant criminal
background check system (NICS) required under the Brady Handgun
Violence Prevention Act.

DATES: The final regulations are effective on August 26, 1997.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations
Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts
Avenue, NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1993, Pub. L. 103-159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Pub. L. 103-159, the "Brady Handgun Violence Prevention Act" (hereafter, "Brady"), as an interim measure, imposed a waiting period of 5 days before a licensed importer, licensed manufacturer, or licensed dealer may transfer a handgun to a nonlicensed individual (interim provision). Brady requires that the licensee wait for up to 5 days before making the transfer while the chief law

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enforcement officer makes a reasonable effort to determine whether the nonlicensed individual (transferee) is prohibited by law from receiving or possessing the handgun sought to be purchased. The interim provisions of the law became effective on February 28, 1994, and will cease to apply on November 30, 1998.

Brady also provides for the establishment of a national instant criminal background check system (NICS) that a firearms licensee must contact before transferring any firearm to nonlicensed individuals. Brady requires that NICS be established not later than November 30, 1998.

Section 922(g) of the GCA prohibits certain persons from shipping or transporting any firearm in interstate or foreign commerce, or receiving any firearm which has been shipped or transported in interstate or foreign commerce, or possessing any firearm in or

affecting commerce. These prohibitions apply 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;
- (4) Has been adjudicated as a mental defective or committed to a mental institution;
- (5) Is an alien illegally or unlawfully in the United States;
- (6) Has been discharged from the Armed Forces under dishonorable conditions;
- (7) Having been a citizen of the United States, has renounced U.S. citizenship;
- (8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; or
- (9) Has been convicted in any court of a misdemeanor crime of domestic violence.

Section 922(n) of the GCA makes it unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport any firearm in interstate or foreign commerce, or receive any firearm which has been shipped or transported in interstate or foreign commerce.

To implement NICS, Brady authorizes the development of hardware and software systems to link State criminal history check systems into the national system. It also authorizes the Attorney General to obtain official information from any U.S. department or agency about persons for whom receipt of a firearm would be in violation of the law.

In order to establish NICS in such a way that it incorporates the

information needed for all the categories of prohibited persons mentioned above, records systems from both Federal and State agencies will be included in the national system. For example, records on fugitives are needed from State and Federal law enforcement agencies. To ensure that the information provided to the national system is accurate, the categories of prohibited persons must be defined in the regulations as clearly as possible.

Notice of Proposed Rulemaking

On September 6, 1996, ATF published in the Federal Register a notice proposing to amend the regulations to provide definitions for the various categories of persons who are prohibited from receiving or possessing firearms (Notice No. 839; 61 FR 47095). In some instances, the proposed definition merely clarified an existing regulation. In other cases, the proposed definitions were new. A definition for "crime punishable by imprisonment for a term exceeding 1 year" was not proposed since that term is already defined in the regulations. A definition for the last category of persons prohibited from receiving or possessing firearms, i.e., persons who have been convicted in any court of a misdemeanor crime of domestic violence, is being addressed in a separate rulemaking proceeding.

The comment period for Notice No. 839 closed on December 5, 1996.

Analysis of Comments

ATF received 11 comments in response to Notice No. 839. Six comments were submitted by Federal agencies including two comments from

agencies within the U.S. Department of Justice (DOJ) (the Immigration and Naturalization Service and the Office of Policy Development), the U.S. Department of State (Office of Passport Policy and Advisory Services), the U.S. Department of Veterans Affairs, the U.S. Department of Defense, and the U.S. Department of Health & Human Services (Substance Abuse and Mental Health Services Administration). Five comments were submitted on behalf of State agencies.

A number of commenters expressed concern about the disclosure of personal information to NICS by States and Federal agencies. Commenters also expressed doubt that agencies can retrieve relevant data based upon the definitions in this regulation. For example, one agency noted that the definition of fugitive from justice requires that the person has left the State. While the State system may indicate the person is a "fugitive," the State system may not have any data indicating the person has fled the jurisdiction.

This regulation is limited to defining the various categories of prohibited persons under the Gun Control Act. It does not address, nor can it resolve, issues related to the retrieval of information on persons under firearms disabilities from agencies' records or issues of confidentiality. It is recognized, however, that any disclosure of information to NICS must comply with all applicable Federal and State privacy laws.

In the subsequent paragraphs, ATF will restate the proposed definition for each of the categories of prohibited persons and discuss the comments received concerning the proposed definition.

Persons Who Are Under Indictment for a Crime Punishable by Imprisonment for a Term Exceeding 1 Year

The term ``indictment," as proposed in Notice No. 839, is defined as follows:

Indictment. Includes an indictment or any formal accusation of a crime made by a prosecuting attorney, in any court under which a crime punishable by imprisonment for a term exceeding 1 year may be prosecuted or where a case has been referred to court-martial if the person is in the military.

ATF received four comments on the proposed definition, two from Federal agencies and two from State agencies. The U.S. Department of Defense (DOD) states that in the military the proposed definition equates indictment to referral to any court-martial. This would include referral to a special court-martial for an offense which carries a maximum punishment of over 1 year, but for which the maximum punishment that could be imposed could not exceed 6 months. Consequently, DOD recommends that the definition be amended to limit the prohibition as it applies in military cases to any offense punishable by imprisonment for a term exceeding 1 year which has been referred to a general court-martial. ATF finds that DOD's suggested change clarifies the meaning of the term ``indictment" with respect to the military and this final rule amends the definition accordingly.

In addition, at the request of the DOJ Office of Policy Development, the definition has been revised to include an information, which is a formal accusation of a crime but differs from an indictment because it is made by a prosecuting attorney rather than a grand jury. The definition would not cover a mere criminal complaint.

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One State agency requested clarification whether an indictment for a crime classified as a misdemeanor, but punishable by a term of imprisonment exceeding 1 year, would fall within the definition. Section 921(a)(20) of the GCA provides that the term "crime punishable by imprisonment for a term exceeding one year" does not include 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. The definition of indictment is being clarified in the regulations by adding a reference to the definition of "crime punishable by imprisonment for a term exceeding one year."

Persons Who Are Fugitives From Justice

As proposed in Notice No. 839, the term "fugitive from justice" is defined as follows:

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.

Two Federal agencies and three State agencies commented on the proposed definition. One Federal agency stated that the term is defined

in the statute (18 U.S.C. 921(a)(15)) and, as such, any expansion of the definition would require legislative action. ATF is not proposing to "expand" the definition of fugitive from justice. Rather, the proposed definition is intended to clarify the meaning of the term. As mentioned in the preamble of Notice No. 839, the legislative history of section 921(a)(15), defining "fugitive," indicates that the term includes both felonies and misdemeanors, but makes no specific reference to misdemeanors. In addition, the statute does not spell out that to be a fugitive from justice it is not necessary that the person left a State with the intent of fleeing the charges. Rather, a person is a fugitive from justice if the individual, knowing that charges are pending, purposefully leaves the State of prosecution and does not appear before the prosecuting tribunal. Accordingly, ATF's proposed regulatory definition merely clarifies the statutory definition by covering these points.

DOD stated that the proposed definition should be tailored to the military setting whereby an individual in the military, without authority, absents himself or herself to avoid a military prosecution. DOD recommends that the following be added to the definition of the term:

The term also includes any member of the Armed Forces who knows that court-martial charges are pending against such member, and without authority, leaves military control; or any member of the Armed Forces who, without authority, leaves military control to avoid giving testimony in any court-martial or any pretrial hearing or deposition conducted under the Uniform Code of Military Justice (10 U.S.C. chap. 47).

ATF is not adopting DOD's proposed amendment into the final regulations. Under military law, a person is considered a fugitive when the person, knowing that charges are pending, leaves military control. Under the GCA, such a person would not be a fugitive unless the person left the State. Because the definition at issue is for purposes of enforcement of the GCA, DOD's proposed definition could not be adopted.

One State agency expressed concern regarding ATF's statement in the preamble of Notice No. 839 that a person is not a fugitive from justice merely because he or she has outstanding traffic citations. The commenter asked whether this includes criminal as well as civil traffic citations. The commenter also believed that the proposed definition should be amended to include individuals with outstanding traffic warrants. To be a fugitive from justice under the statute, a person must have left the State where criminal charges are pending against the person. A person who has an outstanding civil traffic citation or who has not left the State, does not meet the statutory definition. The statute and the final regulation make it clear that "fugitive from justice" does not include a person having only civil traffic citations.

Another State agency expressed the concern that it may have difficulty retrieving information from its records to show that a person with pending charges in a State actually left the State or was aware of the charges. It is recognized that agencies may have difficulty identifying this information. However, the definition in the regulation cannot eliminate elements required by the statute.

Persons Who Are Unlawful Users of or Addicted to Any Controlled

Substance

As proposed in Notice No. 839, the terms "controlled substance" and "unlawful user of or addicted to any controlled substance" are defined as follows:

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.

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 the 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, or multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year.

The DOJ Office of Policy Development inquired whether the proposed definition includes persons found through a drug test to use a controlled substance unlawfully, provided the test was administered within the past year. In response, ATF agrees that this information would give rise to an inference of unlawful drug use. Accordingly, the final regulations are being amended to identify these persons in the definition as an example of unlawful drug user.

DOD commented that the examples should be expanded to include illegal drug use as evidenced by nonjudicial or administrative proceedings. DOD believes that it would be helpful to add the following at the end of the proposed definition:

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.

ATF finds that the Defense Department's proposed language helps to clarify the definition with respect to the military and is adopting the proposed amendment into the final regulations.

Persons Who Have Been Adjudicated as Mental Defectives or Been Committed to a Mental Institution

The terms "adjudicated as a mental defective," "committed to a mental institution," and "mental institution," as proposed in Notice No. 839, are defined as follows:

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 a finding of insanity by a court in a criminal case.

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other legal authority. The term includes a commitment to a mental institution involuntarily. The term includes a 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.

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.

Four Federal agencies and three State agencies commented on ATF's proposed definitions. Two State agencies questioned the meaning of ``lawful authority" as used in the proposed regulations. In ATF's view, ``lawful authority" as used in the proposed regulations clearly means a government entity having the legal authority to make adjudications or commitments, other than courts, boards, or commissions which are specifically mentioned. Therefore, the final regulations do not further define ``lawful authority."

Another State agency asked whether the proposed definition of ``adjudicated as a mental defective" must include a court finding of insanity in all cases. The proposed definition includes a determination that a person, as a result of mental illness, is a danger to himself or to others. The term also includes a finding of insanity by a court in a criminal case. These are separate and distinct definitions. Therefore, a determination of mental illness under the first part of the definition would give rise to firearms disabilities and would not require a court finding of insanity.

DOD commented that the Uniform Code of Military Justice was recently amended to include procedures for the commitment of military personnel for reason of a lack of mental responsibility. Consequently, DOD recommends that the following be added to the definition of ``adjudicated as a mental defective":

The definition * * * shall also include 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.

DOD's proposed amendment will clarify the meaning of the term ``adjudicated as a mental defective" with respect to the military and ATF is adopting the suggested change into the final regulations.

In its comment, the U.S. Department of Veterans Affairs correctly interpreted the proposed definition of ``adjudicated as a mental defective" to mean that any person who is found incompetent by the Veterans Administration under 38 CFR 3.353 will be considered to have been adjudicated as a mental defective for purposes of the GCA. Section 3.353 provides that a mentally incompetent person is one who, because of injury or disease, lacks the mental capacity to contract or manage his or her own affairs.

Persons Who Are Aliens and Are Illegally or Unlawfully in the United States

As proposed in Notice No. 839, the term ``alien illegally or unlawfully in the United States" is defined as follows:

Alien illegally or unlawfully in the United States. (a) Aliens who are unlawfully in the United States or are not in a valid nonimmigrant or immigrant status. The term includes any alien--

- (1) Who has entered the country illegally;
- (2) Nonimmigrant whose authorized period of admission has expired;
- (3) Student who has failed to maintain status as a student; or
- (4) Under an order of deportation, whether or not he or she has

left the United States.

(b) The term does not include aliens who are in "immigration parole" status in the United States pursuant to the Immigration and Naturalization Act (INA).

The Immigration and Naturalization Service (INS) suggested that the definition be modified to better reflect the terminology used in the Immigration and Nationality Act (INA). The commenter states that the INA uses specific legal terms to refer to the status of aliens in the United States. Therefore, INS recommends that the proposed definition be amended to read as follows:

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) Nonimmigrant 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.

ATF agrees with the INS that the wording of the definition for this particular category of prohibited persons should reflect the terminology used in the Immigration and Nationality Act. Accordingly, ATF is adopting INS' proposed definition into the final regulations.

The DOJ Office of Policy Development asked whether the proposed definition of illegal aliens would cover asylum applicants. According to the INS, asylum applicants are not lawfully in the United States and would fall within the definition.

Persons Who Have Been Discharged From the Armed Forces Under Dishonorable Conditions

As proposed in Notice No. 839, the term "discharged under dishonorable conditions" is defined as follows:

Discharged under dishonorable conditions. Separation from the U.S. Armed Forces resulting from a Dishonorable Discharge. The term does not include separation from the Armed Forces resulting from any other discharge, e.g., a bad conduct discharge or a dismissal.

Section 922(g)(6) of the GCA makes it unlawful for persons who have been discharged from the Armed Forces under dishonorable conditions to receive or possess firearms. As ATF stated in Notice No. 839, the legislative history of this provision shows that the prohibition originally applied to persons discharged under "other than honorable conditions." The Omnibus Crime and Safe Streets Act of 1968, Pub. L. 90-351, Title VII, sec. 1202(2), 82 Stat. 226 (1968). However, Title VII was amended by the GCA to limit the prohibition to persons

discharged under ``dishonorable conditions." Therefore, the proposed definition provides that the prohibition applies only to persons discharged under dishonorable conditions, but not to persons separated from the Armed Forces as a result of other types of discharges, such as a bad conduct discharge or a dismissal.

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DOD was the only commenter to address ATF's proposed definition. DOD believes that the proposed definition should be expanded to include commissioned officers, cadets, midshipmen, and warrant officers who have been sentenced to dismissal from the service by a general court-martial. DOD states that a dismissal is a punitive discharge to characterize the separation of an officer under conditions of dishonor (see Rules for Courts-Martial, 1003(c)(2)(A)(iv)). DOD also makes reference to the Military Judges Benchbook, DA Pam 27-9 (September 1996) which provides the following instruction for court members concerning the decision on whether to adjudge a dismissal as part of a sentence:

* * * a sentence to dismissal * * * is, in general, the equivalent of a dishonorable discharge. * * * A dismissal deprives one of substantially all benefits administered by the Veteran's Administration and the Army establishment. It should be reserved for those who, in the opinion of the court, should be separated under conditions of dishonor after conviction of serious offenses of a civil or military nature warranting such severe punishment * * *

In addition, DOD advises that Federal law construes a dismissal as equivalent to a dishonorable discharge for purposes of eligibility for veteran's benefits. (See 38 U.S.C. 530(a)). Finally, DOD believes that defining the term "under dishonorable conditions" to include only dishonorable discharges could lead to an unfair application of the statute between officers and enlisted service members convicted of the same offenses.

Based on the DOD's comments, ATF reexamined the legislative history of the GCA and has determined that the term "under dishonorable conditions" can be interpreted to include a dismissal. Accordingly, this final rule amends the definition of "under dishonorable conditions" to include a "dismissal adjudged by a general court-martial."

Persons Who Have Renounced Their United States Citizenship

As proposed in Notice No. 839, the term "renounced U.S. citizenship" is defined as follows:

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

(a) Before a diplomatic or consular officer of the United States in a foreign state pursuant to 8 U.S.C. 1481(a) (5) and (6); or

(b) Before an officer designated by the Attorney General when the United States is in a state of war.

Two Federal agencies commented on ATF's proposed definition, the

Office of Passport Policy and Advisory Services (Department of State) and the Office of Policy Development (DOJ). The Office of Passport Policy and Advisory Services commented that the definition should be written to exclude renunciations that have been reversed on administrative or judicial appeals and renunciations by persons who subsequently regain citizenship through naturalization. ATF agrees that a reversal of a renunciation would remove the person's Federal firearms disabilities. This is consistent with the removal of disabilities resulting from a felony conviction that has been reversed on appeal. Therefore, the definition will include an exception for reversed renunciations.

On the other hand, a person who has renounced his or her citizenship and has subsequently regained citizenship through naturalization would remain under firearms disabilities. Section 922(g)(7) of the Act makes it unlawful for any person "who * * * has renounced his citizenship" to possess firearms and there is no exception for subsequent naturalization. A similarly worded disability was addressed by the Supreme Court in *Dickerson v. New Banner*, 460 U.S. 103, 116 (1983), where the Supreme Court held that a person who "has been" committed to a mental institution, but later cured and released, continues to have firearms disabilities.

The DOJ Office of Policy Development suggests that the statutory citation which appears at the end of paragraph (a), 8 U.S.C. 1481(a)(5) and (6), be moved to the end of paragraph (b). ATF is amending paragraph (b) of the proposed definition by moving the statutory cite, 8 U.S.C. 1481(a)(6), to paragraph (b).

Persons Who Are Subject to a Court Order Restraining Them From

Committing Domestic Violence

ATF did not receive any comments addressing the proposed definition of ``actual notice." Therefore, the definition is included in the final regulations without change.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule prescribes definitions for the categories of persons prohibited from receiving or possessing firearms. The definitions are necessary to implement the national instant criminal background check system required under the Brady law. No new reporting, recordkeeping or other administrative requirements are imposed on firearms licensees by this final rule. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR

part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of the notice of proposed rulemaking, the written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

Accordingly, 27 CFR PART 178--COMMERCE IN FIREARMS AND AMMUNITION is amended as follows:

Paragraph 1. The authority citation for 27 CFR part 178 continues

to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921-930; 44 U.S.C. 3504(h).

Par. 2. Section 178.11 is amended by revising the definitions for "discharged under dishonorable conditions," "fugitive from justice," and "indictment," and by adding definitions for "adjudicated as a mental defective," "alien illegally or unlawfully in the United States," "committed to a mental institution," "controlled substance," "mental institution," "renounced U.S. citizenship," and "unlawful user of or addicted to any controlled substance" to read as follows:

Sec. 178.11 Meaning of terms.

* * * * *

Adjudicated as a mental defective. (a) A determination by a court, board,

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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.

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.

* * * * *

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 a 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.

* * * * *

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 separation from the Armed Forces resulting from any other discharge, e.g., a bad conduct discharge.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

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 the 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.

* * * * *

Par. 3. Section 178.32(e) is added to read as follows:

Sec. 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

* * * * *

(e) The actual notice required by paragraphs (a)(8)(i) and (d)(8)(i) of this section is notice expressly and actually given, and brought home to the party directly, including service of process personally served on the party and service by mail. Actual notice also includes proof of facts and circumstances that raise the inference that

the party received notice including, but not limited to, proof that notice was left at the party's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; or proof that the party signed a return receipt for a hearing notice which had been mailed to the party. It does not include notice published in a newspaper.

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Signed: April 21, 1997.

John W. Magaw,
Director.

Approved: May 5, 1997.

John P. Simpson,
Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).
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