UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

NOV 27 2002

PERSONNEL AND
READINESS

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, FORCE TRANSFORMATION
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DEFENSE FIELD ACTIVITIES

SUBJECT: Department of Defense (DoD) Policy for Implementation of Domestic Violence Misdemeanor Amendment to the Gun Control Act for DoD Civilian Personnel

This memorandum establishes DoD policy for implementing the domestic violence amendment to the Gun Control Act of 1968 (18 U.S.C. § 922(d)(9) and (g)(9)) for DoD civilian employees and supersedes the memorandum of November 21, 1997, on this subject that provided interim DoD policy. DoD Components shall take all reasonable and necessary steps to implement this policy with regard to civilian personnel. For the purposes of this policy, the DoD Components include the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities of the Department of Defense.

The domestic violence amendment makes it a felony for any person to sell or otherwise dispose of firearms or ammunition to any person whom he or she knows or has reasonable cause to believe has been convicted of a "misdemeanor crime of domestic violence" (18 U.S.C. § 922(d)(9)). The amendment also prohibits anyone who has been convicted of a misdemeanor crime of domestic violence from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition; or receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce (18 U.S.C. § 922(g)(9)). Definitions for the terms used in this memorandum are attached.

The law applies to "misdemeanor crimes of domestic violence" only. For purposes of this memorandum, however, a "qualifying conviction" also includes a conviction for a "crime of

domestic violence" tried by general or special court-martial which otherwise meets the definition of a misdemeanor crime of domestic violence. Further, as a matter of DoD policy, a conviction for an offense meeting the definition of a "felony crime of domestic violence" adjudged on or after the date of this memorandum shall be considered a qualifying conviction for purposes of this memorandum. The term "qualifying conviction" does not include summary court-martial convictions, imposition of nonjudicial punishment (Article 15, UCMJ), or deferred prosecutions (or similar alternative dispositions) in civilian courts.

This policy applies to all DoD appropriated and nonappropriated fund civilian employees as defined in 5 U.S.C. § 2105, including employees working outside United States territory. It does not apply to foreign nationals employed directly or indirectly by DoD.

Each DoD Component shall identify all DoD civilian employment positions that include duties, activities, or responsibilities covered by the Gun Control Act, including selling or disposing of firearms and ammunition (18 U.S.C. § 922(d)), or receiving, possessing, shipping, or transporting any firearm or ammunition in or affecting interstate or foreign commerce (18 U.S.C. § 922(g)) (hereinafter referred to as "covered positions"). It is DoD policy that, consistent with 18 U.S.C. § 922, no DoD Component shall employ or retain in a covered position a civilian employee, including a nonappropriated fund employee, whom Component personnel know, or have reasonable cause to believe, has a qualifying conviction. A data element identifying covered and non-covered positions was placed in the legacy Defense Civilian Personnel Data System (DCPDS) in the November 1998 release.

Each DoD Component shall implement a program to inform its personnel in covered positions of the domestic violence amendment to the Gun Control Act, its consequences, and DoD implementing policy. Information provided shall include notice that personnel in covered positions have an affirmative, continuing obligation to inform their supervisors if they have, or later obtain, a qualifying conviction and that the revised DD Form 2760 (attached), which states that any statements made on the form will not be used in a prosecution for violating the Gun Control Act, is available. The use of this form and the protections it affords have been approved by the Department of Justice. DoD Components shall also post notices about the domestic violence amendment and DoD implementing policy in all facilities where firearms or ammunition are stored, issued, disposed of, and transported.

If in implementing this policy a DoD Component chooses to require that all or some of its covered personnel certify that they do or do not have a qualifying conviction, the DD Form 2760 shall be used for such certifications. Even if certification is not required, DD Form 2760 shall be made available for those personnel who come forward to report a qualifying conviction in compliance with their obligation to do so. The form shall be filed on the left side of the employee's personnel folder.

Each DoD Component shall retrieve Government-issued firearms and ammunition from any DoD employee in a covered position found to have a qualifying conviction and shall suspend the employee's authority to possess firearms or ammunition. Such action shall also be taken if there is reasonable cause to believe a civilian employee in a covered position has a qualifying conviction.

The absence of a qualifying conviction shall be made a condition of employment for all covered positions. No individual who has a qualifying conviction may be assigned or detailed into a covered position. DoD Components shall establish procedures to provide notice to individuals applying for covered positions of the prohibition prior to employment in covered positions. Notification shall include an appropriate statement on a vacancy announcement for a covered position. Individuals may be required to certify on a DD Form 2760 that they do not have a qualifying conviction before selection for, or appointment to, a covered position.

Personnel actions involving incumbents of covered positions having qualifying convictions may be taken in accordance with applicable law, regulations, collective bargaining agreements, and this memorandum. They may include such actions as redesigning a position so that it no longer is a covered position, reassigning an employee with a qualifying conviction, or taking an adverse action (e.g., a reduction in grade or removal).

A DoD Component may afford an employee found to have a qualifying conviction a reasonable time to obtain an expungement or pardon of the conviction. During this time, however, the Components shall retrieve all Government owned firearms and ammunition and suspend the employee's authority to possess firearms and ammunition until an expungement or pardon is obtained.

When initiating a security clearance or suitability investigation on an applicant for or incumbent of a covered position, each DoD component shall identify the covered position on the request for investigation. If the completed investigation reveals a qualifying conviction, the investigation shall be referred to the requesting DoD component for an employment suitability determination.

DoD Components will take all reasonable and necessary steps to fully implement this policy. DoD Components will forward copies of implementing instructions or regulations no later than 120 days from the date of this memorandum.

Implementation of this memorandum with respect to employees represented by unions shall be accomplished consistent with any labor relations obligations.

This memorandum is effective immediately, and remains in force until superseded. The guidance in this memorandum will be incorporated into pertinent DoD issuances.

David S. C. Chu

Attachments:
As stated

DEFINITION OF KEY TERMS
DoD IMPLEMENTATION OF DOMESTIC VIOLENCE AMENDMENT

For purposes of the DoD policy to implement the domestic violence amendment to the Gun Control Act of 1968, the following definitions shall apply:

- The term "firearm" means (A) 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; (B) the frame or receiver of any such weapon; and (C) any firearm muffler or firearm silencer; or (D) any destructive device. However, it does not include major military weapons systems or "crew served" military weapons (tanks, missiles, aircraft, etc.)

- The term "destructive device" means (A) any explosive, incendiary, or poison gas bomb, grenade, mine, or any such rocket having a propellant charge of more than four ounces, or any such missile having an explosive or incendiary charge of more than one-quarter ounce, or any device similar to any of the devices described in the preceding clauses; (B) any type of weapon 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 subparagraph (A) or (B) and from which a destructive device may be readily assembled. *Provided, however*, that the term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon nor shall include any device, although originally designed as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device.

- The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm. However, it does not include ammunition for major military weapon systems or "crew served" military weapons systems.

- The term "possession" includes both "active possession" and "constructive possession," whether authorized or unauthorized. Active possession of a firearm or ammunition exists when the firearm or ammunition is in the immediate possession of the person. Constructive possession exists when a person does not have actual possession but instead knowingly has the power and at a given time to exercise dominion and control over the firearm or ammunition, either directly or through others. Possession need not be exclusive but may be joint with others.

- The term "reasonable cause" means that there is reliable information that a reasonable, prudent person would rely on which makes it more likely than not that the individual has a qualifying conviction.

- The term "receive" means to obtain, to take, to accept, to acquire, or to come into possession of.

- The term "dispose" means to exercise control over, to direct or to assign for use, or to alienate, bargain away, bestow, convey, exchange, give away, or transfer by authority.

- The term "transport" means to move, convey, carry, by any means, or to deliver or receive for the purpose of movement or conveyance.

- The term "ship" means the transportation, or the effecting of transportation, without limitation as to the means or facilities used or with respect to the person to whom any shipment is made.

- The term "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, but such term does not include commerce between places within the same state but through any place outside of that state.

- The term "crime of domestic violence" means an offense that has as its factual basis, the use or attempted use of physical force, or 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 cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victims.

- The term "misdemeanor crime of domestic violence" is a "crime of domestic violence" that is classified as a misdemeanor under State or Federal law.

- The term "felony crime of domestic violence" is a "crime of domestic violence" that is classified as a felony under State or Federal law.

- The term "qualifying conviction" applies to any of the following: (1) a State or Federal conviction for a "misdemeanor crime of domestic violence;" (2) a State or Federal conviction for a "felony crime of domestic violence" adjudged on or after the date of this memorandum, and (3) any general or special court-martial conviction for a Uniform Code of Military Justice offense which otherwise meets the elements of a "crime of domestic violence," even though not classified as a misdemeanor or felony.

  A person shall not be considered to have a qualifying conviction unless the convicted offender was represented by counsel, or knowingly and intelligently waived the right to counsel and, if entitled to have the case tried by jury or before court-members, the case was actually tried by a jury or court members or the person knowingly and intelligently waived the right to have the case tried by a jury or court members, and;

  A person shall not be considered to have a qualifying conviction if the conviction has been expunged or set aside, or the convicted offender has 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.

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	d. SIGNATURE	e. DATE SIGNED *(YYYYMMDD)*