



UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE  
FBI Criminal Justice Information Services (CJIS) Division  
National Instant Criminal Background Check System (NICS) Section



**Information and Examples of the Application of Title 18, United States Code (U.S.C.),  
Section 922, Subsection (g)(3):**

**PERSONS WHO ARE UNLAWFUL USERS OF OR ADDICTED TO ANY  
CONTROLLED SUBSTANCE**

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Regulation Title 27, Code of Federal Regulations (C.F.R.), Section 478.11 specifically defines an unlawful user of or addicted to any controlled substance as “a person who has lost the power of self-control with reference to the use of a controlled substance; and any person who is a current user of a controlled substance in a manner other than prescribed by a licensed physician.” As defined by 21 U.S.C. § 802 and C.F.R. Part 1308; the term “controlled substance” means a drug or other substance, or immediate precursor included in the Controlled Substance Act (CSA) Scheduling. 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 the individual is actively engaged in such conduct. An inference of current use or possession 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*. The ATF has determined that the *present time* is represented by the time frame of within the past 12 months.

Below is a listing of different scenario examples relating to this prohibition. These are examples only, not a complete listing.

• **Drug Conviction within the Past Year**

A conviction for a controlled substance within the past year is disqualifying under the federal drug prohibition 922(g)(3), even if the drug arrest occurred outside of the 12-month time frame. The ATF Chief Counsel has interpreted ATF Regulation 27 C.F.R. § 478.11 for “a conviction for use or possession of a controlled substance within the past year” as a conviction within the past year, although the use or possession (or date of arrest) may not be within the past year.

**Note:** “Within the past year” is defined as being 365 days from the conviction date.

Example: a conviction date of 10/5/2018 is prohibiting through 10/4/2019. If the attempted purchase date is 10/5/2018, it would no longer be disqualifying under 922(g)(3).

Please note, in accordance with ATF Regulation 27 C.F.R. § 478.11, a conviction within the past year DOES NOT include probation before judgment, deferred prosecution, pretrial diversion, etc. Even though a guilty plea may be involved, this is not necessarily an admission of use of a controlled substance and may not by itself be used as an “inference of

current use or possession.” Since there is no adjudication of guilt, these may not be used to satisfy the conviction example. The arrests with such a disposition may be treated as if they had no disposition at all and if the arrest occurred within the past year, the incident report should be obtained to determine inference of current use or possession.

- **Admission of Use/\*Possession**

If there is evidence that an individual admits, within the past 12 months, to using or possessing a controlled substance, the federal drug prohibition 922(g)(3) would apply. Admission of use/possession of a controlled substance may often be found within the narrative of a criminal incident report. An admission of drug use/possession does not have to result in a drug arrest to be disqualifying.

Individuals admitting to illegal use/possession of a controlled substance are prohibited from the receipt/possession of a firearm for one year from the date of admission. It should be noted this must be a self-admission. If a second party states the controlled substance belongs to another subject, neither would be disqualified based solely on that statement.

*\*Possession of medical marijuana by an individual identified as a medical marijuana caregiver, grower, provider, etc. is not disqualifying under 922(g)(3). Use of the marijuana (or other controlled substance) must be established for the prohibition to exist. (Please refer to the sections titled Drug Card—Medical/Recreational Marijuana for more information.)*

- **Reduced to a Different Offense**

Instances where an individual is arrested for the possession of a controlled substance or Driving Under the Influence (DUI) within the past year, but convicted of a non-drug offense such as disorderly conduct, are recommended to be researched to determine if an inference of illegal use or possession can be established. (Please refer to the sections titled Admission of Use/Possession and Drug Testing for more information regarding inference of use.)

- **Single Drug Arrest Within the Last Year with No Disposition**

Outreach to the courts and/or district attorney is recommended to determine if the charge has been disposed of and the record has not been updated yet. It is also recommended to review the incident report to determine if the individual, or the substance in his/her possession, was drug tested positive or if the individual admitted to the unlawful use or possession of a controlled substance. (Please refer to the sections titled Drug Conviction Within Past Year and Drug Testing for more information regarding these scenarios.)

- **Multiple Arrests within the Past Five Years with the Most Recent Occurring Within the Past Year**

This scenario establishes a pattern of use and is disqualifying under the federal drug prohibition 922(g)(3). Final dispositions are not necessary for this prohibition.

DUI offense(s) can be used to establish a pattern of use if it is proven that the DUI offense(s) was/were drug related.

A paraphernalia offense may be used with the multiple arrests scenario if the paraphernalia residue tested positive for a controlled substance.

**Note:** Final dispositions such as “dismissed,” “deferred,” etc., may be used in the multiple arrest application. Although these terms generally indicate a negotiation/compromise during litigation, the ATF counsel provided clarification in 2012 that the regulation calls for multiple arrests, not convictions, when determining a pattern of drug use. Dispositions of “not guilty” cannot be utilized or considered as a multiple arrest.

- **Dismissed Drug Charges**

Scenario—Drug offense or DUI offense showing “dismissed” on the criminal history record returned during a NICS check.

Unless dictated otherwise by state law, a dismissed charge is not considered a conviction and is not disqualifying when dealing with a *single* drug arrest occurring within the past year. The NICS user may rely on the information available to them during the NICS check; therefore, in this scenario, if no conviction has occurred, no additional research is needed to determine the offense is not disqualifying.

Scenario—External research of a recent charge results in both a “dismissed” finding and an inference of current use.

If, while researching a drug arrest within the past year, it is established that the charge was dismissed; however, inference of use is also determined, whether by an admission of drug use/possession, or a positive drug test finding—the federal drug prohibition 922(g)(3) is established due to the inference of use. (Please refer to the sections titled Admission of Use/Possession and Drug Testing for more information regarding inference of use.)

Scenario—Multiple (two or more) drug arrests within the past five years, the most recent occurring in the past year.

As stated above in the Multiple Arrests with the Past Five Years/One Year Scenario, a disposition of “dismissed” may be used in the multiple arrest application.

- **Drug Paraphernalia**

Although misdemeanor possession of drug paraphernalia is not federally disqualifying, drug paraphernalia arrests/convictions may be disqualifying if the offense occurred within the past year AND an inference of use is determined by a positive drug test being conducted on the paraphernalia. A drug paraphernalia arrest within the past year can also be researched to determine if the incident report shows the individual admitted to the use or possession of a controlled substance at the time of the paraphernalia arrest. (Please refer to the sections titled Admission of Use/Possession and Drug Testing for more information regarding inference of use.)

A drug paraphernalia arrest *outside* of the past year may be researched only if the individual

was currently on active probation or if the arrest occurred in the past five years. (Please refer to the sections regarding Active Probation and Multiple Arrests within the Past Five Years/One Year.)

- **Active Probation**

Charges showing active probation may be researched to determine if there are any conditions prohibiting firearm possession and to ascertain if the probation includes drug testing. If the probation includes drug testing, it is necessary to determine whether the subject has tested positive for a controlled substance within the last year to establish the federal drug prohibition 922(g)(3). This would apply on all active probations regardless of the charge. More information regarding drug testing is listed below.

- **Drug Testing**

Inference of drug use can be determined through positive drug testing within the past year. Positive drug testing consists of either field or chemical tests conducted on either the *subject* or the *material*. For example, establishing that a *subject* tested positive for illegal drug use through a blood test or urinalysis is disqualifying if the blood or urine was taken from the subject within the past year. Furthermore, determining that *material* taken from a subject within the past year tested positive as a controlled substance may also be disqualifying. For example, an incident report showing an officer obtained a baggie containing a “green leafy material” from the subject’s shirt pocket which tested positive as marijuana would be disqualifying under the federal drug prohibition 922(g)(3). The NICS Section does not rely on an officer’s opinion or the findings of a drug-detection dog to establish a material is a controlled substance.

It is recommended to obtain the type of controlled substance detected in order to determine if the substance is prohibiting. For example, the prohibition would not apply if a urinalysis shows a subject was found positive for use of Hydrocodone; however, the individual possessed a valid prescription for the Hydrocodone.

In the case of prescribed medication, identification (by the markings on the pills) by the Poison Control Center or a pharmacist may be used in lieu of a chemical test.

It should be noted that the 12-month disqualification time starts from the date the material, urine, or blood was taken from the subject, not the date the matter was tested or the date the results were returned.

Open drug arrests within the past year, paraphernalia arrests within the past year, and any active probation may be researched to determine if the “drug testing” disqualifying scenario applies.

- **DUI/Public Intoxication, Etc.**

In the majority of the states, DUI statutes include driving under the influence of drugs. When

researching recent DUI/Public Intoxication offenses, the statute of the offense may be referenced to determine if the offense could include controlled substances. A NICS User may wish to reference their internal resources, the NICS State Information Pages (available on the Law Enforcement Online), or contact the NICS Section's Legal Analysis Team (LAT) at <NICS\_LegalResearch@fbi.gov> to make these determinations.

Additional research is recommended to be conducted on the following scenarios to determine if the DUI involved controlled substances: DUIs *with no dispositions* occurring within the past **two** years only; DUI *convictions* within the past year; and any DUI/drug conviction with current active probation. For DUI-related arrests/convictions to meet the 922(g)(3) prohibition, it must be established that the controlled substance referenced in the documentation (ie: arrest report) is a scheduled controlled substance AND was illegally or unlawfully used or possessed. (Please refer to the sections titled Admission of Use/Possession and Drug Testing for more information.)

- **DUI Charge Not Within the Past Year, Conviction Is Within the Past Year**

If there is a DUI charge occurring over 12 months ago, but the conviction is within the past year prior to the NICS check, this conviction is disqualifying under 922(g)(3) only if the record of conviction confirms the conviction is for DUI drugs only, and the drug involved is a scheduled controlled substance. An incident report may be used to determine if scheduled controlled substances were involved at the time of arrest. (Please refer to the sections titled Admission of Use/Possession and Drug Testing for more information.) If the incident report provides no indication of drugs, it is not necessary to obtain the record of conviction, as the prohibition does not apply. The ATF Chief Counsel has interpreted ATF Regulation 27 C.F.R. § 478.11, for “a conviction of use or possession of a controlled substance within the past year” as a conviction within the past year, although the use or possession (or date of arrest) may not be within the past year.

**Note:** “Within the past year” is defined as being 365 days from the conviction date. Example: a conviction date of 5/31/2019 is prohibiting through 5/30/2020.

- **Prescription Drugs**

Prescription drugs (medications), which are scheduled controlled substances, as defined by 21 U.S.C. § 802, may qualify under the federal drug prohibition 922(g)(3) if used in a non-prescribed manner. This includes taking too much or more than what is recommended of an individual's own prescribed controlled substance, or taking a prescribed controlled substance without a prescription. (Please refer to the sections titled Admission of Use/Possession and Drug Testing for more information.)

Additionally, some prescription drugs may also qualify under the federal drug prohibition 922(g)(3) even when used in a prescribed manner. Prescription drugs such as SUBOXONE®, buprenorphine, naloxone, and methadone are designated for the treatment of *opioid dependence* by suppressing withdrawal symptoms and cravings for opioids. It is reasonable to conclude a person who is prescribed one of these prescription drugs (or similar prescriptions)

has demonstrated a dependence/addiction to opioids, even when such person is seeking treatment to end that opioid addiction. The ATF provided the following summary: “There is, therefore, support for the argument that §922(g)(3) prohibits the receipt and possession of firearms and ammunition by persons who are addicted to controlled substance lawfully obtained by prescription or otherwise. Thus we conclude that a person who is using a controlled substance such as SUBOXONE® pursuant to prescription to treat addiction to controlled substances is a person “addicted to any controlled substance” and is subject to federal firearms disabilities pursuant to §922(g)(3).”

Prescription drugs that are scheduled controlled substances may also qualify for the federal drug prohibition 922(g)(3) if a person has obtained the drugs by unlawful means, such as forging a prescription, stealing a prescribed medication, or obtaining a prescription drug by fraud.

• **Drug Card—Medical/Recreational Marijuana**

Under federal law, the substance of marijuana is classified as a Schedule I controlled substance and identified as a federally prohibited substance with no approved medical use. Although state laws may permit the use/possession of marijuana for medical or recreational purposes, the use of marijuana remains prohibiting under federal law. Any marijuana user is prohibited from possessing or purchasing a firearm while using marijuana and for one year after last use. Information that a subject admits to using marijuana or that an individual is in possession of a medical marijuana *user* card is enough to establish an inference of current use for the federal drug prohibition 922(g)(3). The information may be obtained by an individual admitting they have a medical marijuana user card or by presenting a copy of the medical marijuana user card within the past year.

The following scenarios will be used to determine the disqualification period in regard to possession of a medical marijuana user card:

1. One year from the date of the medical marijuana user card’s expiration date; or
2. One year from the date of “admission” of possession of the medical marijuana user card, if no expiration date is available; or
3. One year from the date the medical marijuana user card is relinquished.

*Possession of medical marijuana by an individual identified as a medical marijuana caregiver, grower, provider, etc. is not disqualifying under 922(g)(3). Use of the marijuana (or other controlled substance) must be established for the prohibition to exist. Similarly, an individual may possess a medical marijuana handler’s card as a caregiver, grower, or provider for another party, but would not be disqualified, unless use was established. (Please refer to the sections titled Admission of Use/Possession and Drug Testing for more information.)*

- **Synthetic Drugs**

Per emergency orders of the Drug Enforcement Administration, dated 3/1/2011, and 10/21/2011, certain synthetic drugs, as amended in section 201 of the CSA, and their salts, isomers, and salts *or* isomers have been placed in Schedule I of the CSA and may qualify under the federal drug prohibition 922(g)(3). A NICS User may wish to reference their internal resources or contact the LAT at <NICS\_LegalResearch@fbi.gov> to determine if the particular synthetic drug involved is a Schedule I controlled substance. The most common product names to indicate potential Schedule I controlled substance involvement include, but are not limited to, “K2,” “Spice,” “CBD oil,” and “Bath Salts.”

- **Question of Who Actually Possessed the Drug**

If the individual is arrested (no conviction present) for possession of a controlled substance found in his/her vehicle or his/her home, and there are other people present at the time of the arrest, establishing who actually possessed or admitted to ownership of the controlled substance is needed for the 922(g)(3) prohibition to apply. Establishing that the substance is, in fact, a controlled substance is also needed for the prohibition (by subject’s admission or filed/chemical drug test). (Please refer to the sections titles Admission of Use/Possession and Drug Testing for more information.)

- **Materials to Make a Controlled Substance**

An arrest involving only the possession of materials to make a controlled substance would not qualify under this prohibition. A controlled substance must exist or the subject must have admitted to actually making a controlled substance (e.g., methamphetamine) rather than attempting to make. This does not eliminate the possibility of a state prohibition for these types of offenses.

- **Substances Not Included Under the Controlled Substance Act**

Per the ATF, alcohol, glue, and paint huffing/sniffing are not prohibited under the CSA.

- **Attempts and Conspiracies**

“Attempt” or “Conspiracy” to possess a drug or controlled substance generally does not qualify under the federal drug prohibition 922(g)(3), but may be disqualifying if an inference of current use or possession can be established through an admission to drug use/possession or through failed drug testing. (Please refer to the sections titles Admission of Use/Possession and Drug Testing for more information.)