

# **The Federal Firearms Act**

Where does the federal government get its Constitutional authority to enact laws such as the National Firearms Act, which has been codified to Chapter 44 of Title 18 of the United States Code? Upon whom are such laws operative, and where? Since a careful reading of the Constitution reveals that the federal government has no specifically delegated authority to regulate firearms, from where does the federal government's authority to regulate firearms come?

One would think with the high number of Americans supporting the right to keep and bear arms, this question is one that would be of some concern. We've never heard the question asked. One would think that the firearms industry would ask such a question if for no other reason than that they will surely be an industry of the past if anti-gun legislation continues to propagate. In other words, without a solution, the firearms industry as we know it today will cease to exist.

Over the last 30 years or so, laws concerning firearms have become a matter of "public policy", with no regard for the Constitutional elements involved. Why aren't more Americans challenging federal gun laws? We believe it is because The People of this great nation have an innate understanding that the federal judiciary is corrupt and will not honor the Constitution when required to do so.

We also believe that Americans are not willing to challenge federal firearms laws because over the last 40 years or so, laws have been written in an ever-increasingly deceptive manner. Even laws that were clear when originally enacted have been amended over the last 40 years to remove the specificity of the law and render them more vague, and more prone to "flexible" interpretations by "cooperative" judges. Ironically, this has been done under the guise of making these laws more clear! As many laws stand today, the average American cannot understand them and attorneys generally will not explain the true meaning, lest they lose their monopolistic advantage over the machinery of the legal system.

## **The Federal Firearms Act (as amended)** (18 USC, Chapter 44)

Try as you might to find the title, "Federal Firearms Act" associated with 18 USC, chapter 44, you will not. Why then do we refer to it as such here? Many of the provisions that are currently codified to Title 18, chapter 44, were not originally codified there.

The Federal Firearms Act was enacted in 1938 and it was originally codified to Title 15. So what is Title 15? It is entitled "Commerce and Trade". Do you remember that little discussion about creating vagueness where none originally existed? Well here is a stunning example. From 1938 until 1968, the Federal Firearms Act was within Title

15. That's 30 years folks! Despite the law operating just fine for 30 years, someone deemed it no longer proper to have the law contained within Title 15. Want to guess why? That's right – the government's jurisdictional limits were far too easy to ascertain when the law was within the "Commerce and Trade" title. If it wasn't moving in interstate or foreign commerce, then the US didn't have jurisdiction over it! However, by moving the Act to Title 18, and thus disconnecting the Act from the Title of "Commerce and Trade", there are few clues left to the law's original intent and its Constitutional limitations.

Despite the fact that chapter 44 of Title 18 has been amended many times, (most notably by the Gun Control Act of 1968) it is still essentially the Federal Firearms Act of 1938 [ch. 850, 52 Stat. 1252].

Having said all this, there is an interesting element to Chapter 44 and its interstate commerce authority that you should know about.

There are two different definitions for interstate and foreign commerce in Title 18. The first is found in §10 of the Title and is the definition that is generally applicable through the entire Title, unless re-defined for a specific chapter or section of the Title.

**18 USC, §10:**

*The term "interstate commerce", as used in this title, includes commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia. The term "foreign commerce", as used in this title, includes commerce with a foreign country.*

This is a pretty clear definition – and it will get clearer as this article proceeds!

Interestingly, "interstate commerce" and "foreign commerce" are redefined just for chapter 44. ***For use within chapter 44, they are no longer two separate items, but have been combined into one legal term, to wit:***

**18 USC §921(2)**

*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 "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).*

[emphasis and underlining added]

You should recognize that as a **legal term**, the phrase “interstate or foreign commerce” does **not** mean what logic might tell you it means. **You must remember that it means only what Congress says it means and nothing more!**

We have had to ask ourselves why the general definition provided in §10 was inadequate for use within chapter 44. If §10 was a good enough definition for all of Title 18 generally, why is it not adequate for chapter 44?

The only distinction we find is in the use of the words “...**any place** in a State...”. Why is that change so essential? Why go through the hassle of altering the definition just to add two little words? On the surface it doesn’t seem to make sense – or does it? Maybe we should ask what “**place** within a State” might the definition be referring to, and why would that distinction be important? Let’s explore!

Title 18, §13 is a general provision section (which means it is operative throughout the Title) and is entitled “Laws of States adopted for areas within Federal jurisdiction”. What does that title mean? One of the things it means is that there is “State jurisdiction” and there is “federal jurisdiction”, and the two are **not** the same.

Before we explore §13 any further, we need to take a brief side trip and look at §7. We need to do this because §7 is specifically referred to in §13, and we’ll get lost if we don’t understand exactly what is being referred to in §7.

Section 7 defines the “Special maritime and territorial jurisdiction of the United States”. Although the definition is a bit long and wordy, here is the essential part in reference to what we are discussing in this article:

**18 USC §7(3):**

*Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or **any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.***

The basic meaning of that definition is any location that is not under State sovereignty, but solely under federal sovereignty, or otherwise within federal jurisdiction. It must be remembered that such federal “places” exist **within** the states of the Union.

One should take note of the common language, and common meaning, between 18 USC §7, and Article I, Section 8, Clause 17 of the US Constitution:

*To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may by cession of particular states, and the*

*acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over **all places purchased by the consent of the legislature of the state in which the same [federal place] shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings***

Now that you can clearly see where §7 is taking us, let's go back to §13; specifically, subsection (a).

**[Editor's Note:** *We've removed some of the excessive wordiness from §13(a) that might tend to confuse the meaning for the first-time reader.*]

**18 USC, §13(a):**

*Whoever within...**any places**...provided in section 7 of this title...not within the **jurisdiction** of any State...is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted **within the jurisdiction of the State...in which such place is situated**...*

**Ah ha!** Did you get that? Ladies and gentlemen, §13 (in conjunction with §7) defines the "**places**" that are referred to in the definition of "interstate or foreign commerce" at §921(2). The **places** made mention of in §921(2) are the "places...provided in section 7 of this title", which of course we now know are federal lands (and waterways) that are not within the jurisdiction of the State, but are within the geographical boundaries of the State!

Now let's do a little of our own alteration to §921(2). Let's add the specificity that the legislative draftsmen **intentionally** left out when they wrote the definition of "interstate and foreign commerce" (at §921(2)). Our "clarified" version reads like this:

*The term "interstate or foreign commerce" includes commerce between any area of land under federal jurisdiction that is within a State and any area of land under federal jurisdiction that is outside that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia...*

Boy, that sure changes the meaning that you had of §921(2) about 10 minutes ago, doesn't it? Also, please note that after the part of the definition that addresses "States" is complete, it goes on to define other federal areas. In that portion, "interstate or foreign commerce" means commerce [solely] **within** any possession of the United States or within the District of Columbia! My, my, my...Congress sure defines terms to mean whatever the hell Congress wants them to mean!

Are you getting the picture? Every "place" being referred to in §921(2) is a place within a State, or outside a State, that is under the exclusive legislative jurisdiction of

Congress, pursuant to Article 1, Section 8, Clause 17 of the US Constitution. And ***the “interstate and foreign commerce” being described at §921(2), is a limited form that operates only between such “places”***. For the purposes of chapter 44, Congress has even defined “State” as “the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States”. In short, it’s all territorial.

The definition of “interstate or foreign commerce”, at 921(2), is only a “red herring” placed there by the legislative draftsmen to make you think the authority is nation-wide and all-pervasive under the US Constitution’s interstate commerce clause. In point of fact, certain sections of chapter 44, such as 922(o)(1), which makes the mere possession of a machine gun a crime, can only be territorial in nature because Congress has no authority to define any act that takes place within a state of the Union as a crime (except such acts as take place against federal property or persons). ***The federal government cannot define a crime that would take place within a state of the Union because the US has no police powers in a state of the Union.***

Now do you see why it was so important that chapter 44 not use the general definition of “interstate commerce” provided at §10? Two little words – ***“any place”*** – needed to be added if the law was to pass Constitutional scrutiny.

If one reads the “Congressional Findings and Declarations” in the notes for §921, one finds that Congress enacted the Federal Firearms Act, and its various amendments, in order to [ostensibly] assist the States in controlling crime. Well guess what? The Constitution does not grant the federal government any authority to assist the States of the Union in combating crime. The federal government may regulate interstate commerce; it can define crimes that may take place upon federal property; and it can exercise police powers within places that are embraced by the “exclusive legislative control” clause, ***but it may not do any of that upon land that is under the sovereignty of a state of the Union.***

Congress is free to make any asinine statement it wants about its “intentions” or its “goals”, but the text of the laws it enacts must still adhere to the limits of federal power imposed by US Constitution.

### **Laws No Longer Printed**

You should also be made aware that the historical notes reveal there have been some significant items that were “omitted” when the statutes were transferred from Title 15 to Title 18. It should be noted that there is no legal definition for the word “omit”; therefore it can only be defined by a standard English dictionary. The first definition that appears in Webster’s II New Revised University Dictionary (1994) is, “Left out”. When a section or portion of a statute is “omitted” it is exactly as Webster has stated – it is merely left out. The section or portion has not been repealed; it is still in full effect – it simply isn’t printed in the United States Code any more!

**[Editor Note** – *The original language, in its entirety, can still be found in the original Statute-at-Large. See “[What is the United States Code](#)” for more on Statutes-at-Large.]*

So what are these sections that have been left out? The most interesting items left out in 1968 were subsections (f) and (i) of then section 902 (Title 15), which speaks of the rule of “presumption from possession”. While we’ve not looked up the old section 902, our experience with such statutory “presumptions” tells us that the section likely raised a rebuttable presumption that if you were found with any firearm, suppressor, etc., that is defined in [the current] chapter 44, you acquired it through an act of “interstate or foreign commerce”. Of course for a presumption to be rebutted, the accused would have to know that the US Attorney’s Office and the United States District Court were functioning under a statutorily created presumption to begin with. Needless to say, that’s a bit difficult when the law isn’t printed in the Code any more!

The other omitted items are subsections (b) and (c) of former section 902 which prohibits, “receipt with knowledge...that the transportation or shipment was to a person without a license where **State laws** require prospective purchaser to exhibit a license to licensed manufacturer or dealer, respectively.” You’ve got to love what these guys choose to keep hidden from you!

### Summary

Hopefully this article has helped you to understand the sophistry used when the legislative draftsmen wrote the text that now appears as chapter 44 of Title 18. Hopefully, this will assist Americans in not being wrongfully prosecuted for crimes they’ve never committed and hopefully this document will somehow get to the firearms industry, since it is the key to freeing that industry from the stranglehold of “public policy” law that will eventually take the industry’s life, and with it the American Citizen’s access to at least one form of arms.

Let’s review what we’ve covered:

- 1) Title 18 of the United States Code (USC), chapter 44, has its foundation as the Federal Firearms Act.
- 2) The Federal Firearms Act was enacted in 1938 and was originally codified to Title 15, “Commerce and Trade”.
- 3) In 1968, most of the Federal Firearms Act was repealed and reenacted in Title 18.
- 4) Certain elements of the Federal Firearms Act were never repealed, but are no longer printed in the USC. [This is why one must always read the actual Act of Congress to see what they’re really up to.]
- 5) Since 1968, chapter 44 has been amended numerous times, usually under the disingenuous rationale of securing the rights of law abiding gun owners!

- 6) The foundation of the federal government's authority in chapter 44 is territorial, i.e., Article I, Section 8, Clause 17 of the US Constitution.
- 7) Chapter 44 does contain a certain limited form of commerce authority, but it only controls commerce between federal places within States, or commerce within a federal possession, or the District of Columbia.
- 8) The definition of "interstate and foreign commerce" at §921(2) does not refer to the government's Constitutional authority to regulate commerce between the states of the Union. It is a territorial based power that relies on the federal government's police powers, which exist only within those places that are subject to the exclusive legislative authority of Congress.
- 9) The "declarations" or "findings" that Congress may issue have absolutely no bearing upon the words of an Act Congress passes. Such declarations and findings may contain any manner of outrageous lies or distortions, but the language of the laws that Congress passes must still adhere to the Constitution.

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[www.originalintent.org/chapter44.shtml](http://www.originalintent.org/chapter44.shtml)