



Port Security Advisory (4-09)(Rev 3)

Subject: **INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)**
(Highlighted sections are new in Revision 3)

The Coast Guard has received a number of questions from U.S. vessel operators and company security officers over concerns about compliance with U.S. law when placing firearms on board their vessels to defend against or deter pirate attacks in high-risk waters. The Coast Guard has worked closely with the Department of Justice, and the Department of State's Directorate of Defense Trade Controls (the agencies responsible for the International Traffic in Arms Regulations [ITAR]), and Customs and Border Protection (CBP) (the agency responsible for enforcement of ITAR), to provide guidance for owners, operators, and security teams of U.S. – flagged vessels who want to place firearms aboard vessels. It outlines potential methods of compliance but does not replace the underlying regulations. This guidance does not address foreign-flagged vessels. The Department of State's Directorate of Defense Trade Controls website <http://www.pmdtc.state.gov/> provides additional guidance as well as links to forms and the electronic licensing process. **Inquiries can be made to the DDTC Response Team available by phone at (202) 663-1282 or by e-mail: ddtcresponseteam@state.gov.** The website for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) provides guidance on federal firearms regulations http://www.atf.gov/pub/fire-explo_pub/2005/p53004/index.htm.

Restrictions for U.S.-Flagged Vessels (Inbound and Outbound)

U.S. operators or persons carrying, possessing, or transporting firearms aboard U.S.-flagged vessels in any location must comply with all applicable laws, including state laws, the Gun Control Act, the National Firearms Act, and International Traffic in Arms Regulations (ITAR) in 22 C.F.R. Parts 120-130.

ITAR

The export of shotguns with barrel lengths over 18 inches is governed by the Department of Commerce. However, certain shotguns with combat features fall under the control of the ITAR. All other firearms and ammunition exported from the United States by U.S. flagged vessels are subject to ITAR. For firearms to be exported, the operator of a vessel, who must be a U.S. person defined in accordance with 22 C.F.R. 120.15, can obtain a temporary export license (DSP-73) in accordance with 22 C.F.R. § 123.5.

A DSP-73 temporary export license is valid for up to four years and may be used for multiple entries and exits of the firearms from the U.S. and would require the operator to identify and list on the license application the firearms or other defense articles (e.g., ammunition) to be temporarily exported for use aboard the vessel. The license application must also list each foreign country for each port of call that will be visited within those four years. Prior to



exportation, an Electronic Export Information (EEI) must be filed in the Automated Export System (AES) and the DSP-73 decremented by CBP. A license obtained by the operator could allow the operator to stow the firearms on board the vessel in a U.S. port and keep them stored aboard the vessel until required for use within High Risk Waters by the crew or contracted security. The temporary export license would not allow transfers of the firearms to any other vessel, although the crew could be changed. In order to apply for this license, the operator must register with the Department of State, Office of Defense Trade Controls (DDTC). Information can be found at <http://www.pmdrtc.state.gov/registration/index.html>.

While the temporary export license procedure appears to meet the needs of U.S. vessel operators and companies that decide to place firearms onboard their vessels, another limited exemption may be available. The personal use exemption detailed in 22 C.F.R. § 123.17 under ITAR allows U.S. persons to export up to three non-automatic firearms and 1000 rounds of ammunition for their personal use. It only applies to non-automatic firearms not greater than .50 caliber. No license is required, but all conditions to qualify for the exemption must be met. See 22 C.F.R. § 123.17(c). Among other conditions, the personal use exemption requires that the arms “be for that person’s exclusive use and not for reexport or other transfer of ownership.” 22 C.F.R. § 123.17(c)(3). In order to claim the license exemption, the individual must file an EEI in AES and make the claim at least 24 hours prior to each departure from the United States. See 22 C.F.R. § 123.22. The owner must also declare an intention to return the arms on each return to the United States. For more information on AES, see www.aesdirect.gov.

Additional note on the use of the personal exemption under Section 123.17 ITAR: This “personal use” exemption only applies to individuals who are U.S. citizens and not corporations, business associations, partnerships, or other business units or entities. Where companies desire to hire security teams that will not travel with their weapons or where weapons will be transferred from one security team or crew member to another, the personal use exemption will not apply. In those circumstances, it is advised that a temporary export license be obtained to cover the vessel in question for a specified duration.

The exporter is encouraged to contact DDTC if they have any questions or concerns. Contact information can be found on the DDTC website: <http://www.pmdrtc.state.gov/>.

Gun Control Act, National Firearms Act, Regulations

ITAR restrictions notwithstanding, U.S. law places additional restrictions on the purchase, possession, transfer, and transport of firearms within the United States and across state lines. The federal laws governing firearms are the Gun Control Act (18 U.S.C. § 921 *et seq.*) and the National Firearms Act (26 U.S.C. § 5801 *et seq.*) and their implementing regulations at 27 C.F.R. Parts 478-479. For example, firearms regulated under the National Firearms Act must be registered with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and transferred only with the approval of ATF. These firearms include machine guns, short-barrel rifles, short-barrel shotguns, silencers, and destructive devices. The Gun Control Act sets out classes of persons who are forbidden from possessing or transporting firearms or ammunition in or affecting commerce. See 18 U.S.C. § 922(g).



State and Local Laws

State laws may impose independent restrictions on firearms and should be researched before bringing firearms into a port. The ATF compiles a compendium of the State laws and makes it available on its public website: <http://www.atf.gov/firearms/statelaws/28thedition/index.htm>.

Foreign Purchase

If U.S. operators or persons purchase weapons in a foreign country for their use and stow them aboard the vessel in a foreign port, there would be no U.S. licensing requirements while they are abroad (although firearms brokering prohibitions would still apply). Prior to bringing the firearms into the United States, however, the owner of the firearms would have to ascertain whether a legal exception applied to the general restrictions on importation. The Gun Control Act generally bars importation of firearms, subject to certain exceptions, *see* 18 U.S.C. §§ 922(l) and 925(d), and the National Firearms Act forbids the importation of certain firearms, including machineguns, short-barrel rifles, short-barrel shotguns, silencers, and destructive devices. There are also restrictions on importing surplus military firearms, non-sporting firearms, and firearms from proscribed countries (18 U.S.C. § 925(d)(3); 27 C.F.R. § 447.52).

If importation were permissible under those laws, the owner would have to register with the Department of State and obtain a DSP-61 temporary import license. The DSP-61 alone would not be sufficient to excuse compliance with the Gun Control Act and the National Firearms Act. It is mandatory that the DSP-61 be presented to U.S. Customs and Border Protection (CBP) and be properly decremented upon importation and exportation. Upon exportation, the EEI must be filed in AES and the DSP-61 decremented by CBP. Alternatively, the operators/security teams may, if legally permitted, permanently import the foreign-bought firearms through a federally licensed firearms importer or dealer, using ATF Form 6. However, if the operator/security team wishes to temporarily export the firearm from the United States, they must file a DSP-73 (unless the firearm qualifies for the exemption under 22 C.F.R. §123.17). (See the ITAR section above for more information on the DSP-73 license and exemptions).

Summary

Operators must ensure compliance with all U.S. laws and regulations in order to purchase and transport firearms to the ship for loading.

For U.S. flagged vessels inbound or outbound, if the U.S. persons aboard complied with the Gun Control Act, the National Firearms Act, and applicable state law, the most flexible ITAR solution would be for the vessel operator to obtain a DSP-73 temporary export license, which would allow the vessel to import and export the listed firearms into and out of the United States over a four-year period, but the temporary export license would not authorize transfers of the firearms to other vessels. Although a personal exemption under ITAR, 22 C.F.R. § 123.17, could also be used, it would need to be reissued for every trip. The personal exemption would not allow for the transfer of weapons to other individuals.



Although this PSA addresses compliance with U.S. law, vessel owners, operators and security companies must still comply with foreign Port State requirements when calling on a port. Prior to entering a foreign port with firearms aboard, and also when security teams are utilizing a personal exemption and flying into a port state with their weapons, vessels should contact the local embassy for assistance in determining the individual port state's requirements for transporting firearms within that country. Close coordination between the ship's agent and the local embassy will help ensure local laws are not inadvertently violated.

THE CONDITIONS OF ENTRY APPLICABLE TO VESSELS OUTLINED IN PORT SECURITY ADVISORY 10-09 REMAIN IN EFFECT.