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State Department Provides License Exemption for Temporary Exports of Personal Body Armor

On August 6, 2009, the Department of State, Directorate of Defense Trade Controls (DDTC) announced an important change to the requirements associated with the temporary export of body armor. The final rule, effective immediately, amends the *International Traffic in Arms Regulations* (ITAR) to exempt from export licensing requirements temporary exports of body armor for exclusive personal use, with certain conditions.

Certain types of body armor are controlled for export from the United States under Category X of the United States Munitions List (USML), and thus require a license from DDTC prior to export. This new exemption allows individuals to hand-carry their personal body armor without a license from the United States to foreign locations (with certain exceptions). Particularly relevant for private security enterprises and security personnel, the licensing exemption eases the administrative burden imposed by the general requirement to seek and obtain licenses in the face of time-sensitive operational requirements. Furthermore, in a direct acknowledgement of current security demands, DDTC explicitly included Iraq and Afghanistan among the list of approved end-use destinations. These country destinations generally are ineligible for license exceptions.

As revised, Section 123.17 of the ITAR now permits U.S. persons to export temporarily from the United States one set of Cat. X(a)(1) body armor, provided certain conditions are met. Notably, the U.S. person exporting the body armor must declare the goods on departure to U.S. Customs and Border Patrol (CBP) by completing a CBP Form 4457 "Certificate of Registration for Personal Effects Taken Abroad." Additionally, a CPB officer must make an inspection of the body armor, which must be contained with the U.S. person's baggage or effects (whether accompanied or unaccompanied). Finally, the body armor must be intended for the exporting individual's exclusive use, and may not be for reexport or other transfer of ownership. If the body armor is lost or not returned to the United States, the exporter must submit a detailed report to DDTC.

As noted above, DDTC has not granted a blanket exemption. For example, the exemption does not apply to end-use in a country against which the United States currently maintains an arms embargo or ITAR licensing restrictions, as listed in Part 126.1 of the ITAR. In addition, individuals wishing to utilize the exemption for temporary exports of body armor to Iraq must meet additional criteria. Namely, the individual making the export must be either affiliated with the U.S. government and traveling on official business, or traveling to Iraq under direct authorization by the government of Iraq and engaging in humanitarian activities.

In spite of these restrictions, however, by issuing the licensing exemption, DDTC has provided welcome and much-needed relief for security professionals from certain export licensing burdens. Hopefully, DDTC will continue this trend to adapt and respond to needs of U.S. exporters and service providers as dictated by current global conditions.

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