

ALCOAST 549/10

COMDTNOTE 16200

SUBJ: LIMITATIONS AND RISKS TO COAST GUARD PERSONNEL UNDER THE LAW ENFORCEMENT OFFICERS SAFETY ACT (LEOSA)

A. U.S. COAST GUARD INVESTIGATIONS MANUAL, COMDTINST M5527.1 (SERIES)

B. 6 C.F.R. PART 5, DISCLOSURE OF RECORDS AND INFORMATION

C. U.S. COAST GUARD MARITIME LAW ENFORCEMENT MANUAL, COMDTINST M16247.1 (SERIES)

D. ORDNANCE MANUAL, COMDTINST M8000.2 (SERIES)

E. UNITED STATES COAST GUARD REGULATIONS 1992, COMDTINST M5000.3 (SERIES)

1. Summary: the Law Enforcement Officers safety act (LEOSA) confers a very limited immunity to a restricted class of Coast Guard personnel from certain state and local laws that prohibit or restrict carriage of concealed firearms. Uniformed Coast Guard members who choose to rely on the LEOSA do so at their own personal risk. The risks to relying on LEOSA as a defense to state and local firearms carriage laws are substantial. LEOSA provides no immunity from prosecution for Coast Guard personnel who carry concealed firearms in violation of state laws that prohibit carriage of firearms on private property. LEOSA provides no immunity from state or local laws that prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park. LEOSA applies only to state and local concealed firearm carriage laws and provides no immunity from any other laws dealing with the possession of firearms or other weapons. LEOSA provides no immunity from or otherwise affects any federal laws and regulations, including federal weapons carriage laws and the UCMJ. To be covered by LEOSA, Coast Guard personnel must meet all the requirements set forth below in para. 5.

Primarily, potential LEOSA coverage is limited to Coast Guard personnel who hold a current, effective, and properly issued command designation letter as a boarding officer or boarding team member. Failure to meet any of these requirements means LEOSA is not applicable to that individual. Given these severe restrictions and risks, Coast Guard personnel should use extreme caution before making their personal decision whether or not to rely on LEOSA immunity in the carriage of firearms in their personal capacity. If in doubt as to whether covered by LEOSA, service members are encouraged to take the prudent action of complying with all state and local permitting requirements.

2. Purpose and applicability: this ALCOAST explains how the LEOSA applies to uniformed active duty and reserve Coast Guard members. Reference (a) provides concealed carriage policy for Coast Guard investigative service (CGIS) special agents (civilian and military). Civilian employees of the USCG and members of the Auxiliary are not covered by the LEOSA unless they are CGIS special agents or otherwise meet the LEOSA definition of "Qualified Law Enforcement Officer" (described below) through their affiliation with another agency. Although some USCG retirees may meet some of the legal requirements for coverage by LEOSA by virtue of their USCG service, the USCG does not have the infrastructure in place to issue and track the requisite credentials. Hence, this ALCOAST does not apply to uniformed retirees. Director, CGIS will provide separate guidance concerning the application of LEOSA to retired CGIS special agents.

3. Background: on July 22, 2004, President Bush signed Public Law 108-277, which included the LEOSA. Two classes of persons are covered by the LEOSA: the "Qualified Law Enforcement Officer" codified at 18 U.S. Code 926b, and the "Qualified Retired Law Enforcement Officer" codified at 18 U.S. Code 926c. Subject to certain important exceptions, persons covered by the LEOSA may carry a concealed firearm in any jurisdiction in the United States, regardless of any state or local law that prohibits or restricts concealed firearms carriage (with or without a license or permit).

4. Scope: the LEOSA confers a very limited immunity to state and local laws that prohibit or restrict carriage of concealed firearms. If a person is covered by the LEOSA, the person may carry a concealed firearm in any state,

the District of Columbia, Puerto Rico, and U.S. possessions even if a state or local law would otherwise prohibit that carriage or restrict that carriage by requiring a permit or license. There are, however, very important limitations to the scope of the LEOSA.

A. The LEOSA does not confer immunity from state or local laws that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property. Consequently, a person covered by LEOSA must obey whatever state laws apply under these circumstances. For example, if state law allows private persons to prohibit the possession of a concealed firearm on their property and the private person has properly done so, then LEOSA provides no immunity from prosecution for persons who carry a concealed firearm in violation of the prohibition.

B. The LEOSA does not confer immunity from state or local laws that prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park. Accordingly, a person covered by the LEOSA must obey whatever state laws govern the carriage of concealed firearms on private, state, or local government property.

C. The LEOSA applies only to state and local concealed firearm carriage laws. It provides no immunity from any other laws dealing with the regulation or possession of firearms or other weapons. Stated another way, except for concealed firearm carriage laws, any other state and local law is unaffected by the LEOSA.

D. The LEOSA does not confer immunity from or otherwise affect any federal laws and regulations, including federal weapons carriage laws and the UCMJ. A person covered by the LEOSA must nevertheless obey all federal laws and regulations. This includes federal laws and regulations that restrict the carriage of certain types of firearms or methods of carriage, as well as those laws that restrict the carriage of firearms or other weapons in federal buildings, on federal property, and in areas where prohibited or restricted by federal law (e.g. airports).

5. Persons covered by the LEOSA:

A. A “Qualified Law Enforcement Officer” for purposes of the LEOSA is a person who meets all of the following requirements and conditions:

- (1) be an employee of a government agency
- (2) be authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law
- (3) have statutory powers of arrest
- (4) be authorized by the agency to carry a firearm
- (5) meet standards established by the agency, which require the employee to regularly qualify in the use of a firearm
- (6) not be the subject of any disciplinary action by the agency
- (7) not be prohibited by federal law from receiving a firearm
- (8) not be under the influence of alcohol or another intoxicating or hallucinatory drug or substance and
- (9) carry their properly issued and valid common access card (CAC).

B. In a state criminal case in which a defendant asserts the LEOSA as a defense to a concealed firearm carriage violation of state law, a state court will determine whether the person is a “Qualified Law Enforcement Officer” for purposes of the LEOSA. While courts and parties to litigation may seek the views of, or evidence from, the USCG on this matter, the ultimate determination lies with the state court, not the USCG. Testimony in state court by any USCG member and production of documentary evidence for matters arising from official duties will only be provided in accordance with reference (b). Notwithstanding any other USCG policy or regulation, no USCG Attorney or Judge Advocate may enter an appearance in any state prosecution related to the LEOSA without the express authorization of the Judge Advocate General.

C. Provided they meet all the conditions in paragraph 5.a. At the time of firearm concealed carriage, the USCG considers the below described uniformed USCG personnel to fall within the LEOSA definition of “Qualified Law Enforcement Officer”.

(1) Commissioned, Warrant, and Petty Officers, including reservists covered by chapter 3.c.1.b.3 of reference (c), who hold a current, effective, and properly issued command designation letter as a boarding officer or boarding team member in accordance with chapter 3.c.1.b.1 of reference (c).

(2) LEOSA extends the definition of qualified Law Enforcement Officer to those authorized to supervise law enforcement activity provided all other criteria are satisfied. Although state court determinations will govern individual cases, the USCG interprets this to mean those personnel who are in the direct operational chain of command and would include: commanding officers and officers-in-charge of units supervising at least one full-time boarding team as that term is defined in reference (c), Chiefs of Response of areas, districts, and sectors, Chiefs of Law Enforcement of areas, districts, and sectors, Area Commanders, CG-DCO, District Commanders, Dog Commander, COMDT (cg-5), COMDT (cg-53), COMDT (cg-531), and Dog (DG-3) provided such persons are, at the time of concealed firearm carriage, authorized to carry a government issued personal defense weapon (GI-PDW) in accordance with reference (d) and appendix h of reference (c).

6. Additional cautionary note: as expressly stated above, the LEOSA confers a limited immunity to state and local laws dealing with concealed firearms, and no immunity to any other state or federal laws and regulations. Accordingly, uniformed members of the service who choose to rely on the LEOSA do so at their own risk and should carefully consider the following points before choosing to carry concealed firearms without obtaining a concealed firearm carriage permit, license or training required by state or local law.

A. Appendix h.18.a of reference (c) prohibits the carriage of the GI-PDW in a concealed manner. Reference (d) prohibits the carriage of a GI-PDW when not in the performance of official duties. In addition, chapter 3.c.1.d.2 of reference (c) prohibits the carriage of personal or privately owned firearms or ammunition in the performance of law enforcement duties. Some examples of conduct prohibited by these policies include carriage of a GI-PDW in a concealed ankle holster during a boarding, carriage of a GI-PDW in a personal automobile when not under orders, and carriage by a boarding team member of a personally owned firearm in any manner during a boarding.

B. Likewise, article 8-2-1(16) of reference (e) prohibits USCG personnel from carrying, among other things, concealed weapons in any USCG unit without proper authority (the LEOSA does not provide this authority). Similarly, federal laws and regulations typically prohibit concealed carriage of firearms on most federal installations and lands. Violation of these prohibitions, and other federal firearms laws, is subject to the uniform Code of Military Justice or federal prosecution for which the LEOSA provides no immunity. Examples of the prohibited conduct include carrying a concealed firearm on a USCG station without the express authorization of the Commanding Officer.

C. The USCG does not provide training in off-duty firearms safety and security to uniformed members of the service because such carriage is not generally required for the performance of official duties. Accordingly, members choosing to carry firearms off-duty, especially concealed firearms, should obtain appropriate firearms safety and security education.

D. The LEOSA does not confer any law enforcement powers. USCG law enforcement powers ashore are limited and, in some circumstances, non-existent. Consequently, it is imperative that uniformed members relying on the LEOSA to carry a concealed personal firearm while not in the performance of official duties understand that authority to use such a firearm (as distinguished from authority to carry it in a concealed manner without a state or local permit) will be highly fact-specific and may largely depend on state law. Activity involving use of concealed firearms while not in the performance of official duties will likely be outside the members scope of employment (a decision made by the U.S. department of justice (DOJ), not the USCG) thereby placing the costs of legal defense solely on the member. Additionally, neither the USCG nor DOJ will normally provide representation in state court for criminal charges.

7. Questions: members and field commands may pose questions related to the LEOSA and this ALCOAST to their servicing legal offices. Staff Judge Advocates may contact the operations law group, COMDT (cg-09412) as necessary for further guidance.

8. RADM T. F. Atkin, Acting Assistant Commandant for Marine Safety, Security and Stewardship, sends

9. Internet release authorized.

Note from Handgunlaw.us: This communication was released in all capital letters. I have removed the all caps to make it easier to read. It may contain some words or abbreviations that should be capitalized.