



# Export Controls Alert

## Recent developments in export controls

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### Exceptions to the rules: changes to license exceptions for temporary exports and replacements parts ease way for exporters

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Companies should soon find it easier to export items abroad on a temporary basis and to service or replace parts on previously exported items. Effective October 15, 2013, several license exceptions contained in the Export Administration Regulations (“EAR”) will be revised to reflect the changes to the EAR as a result of the Obama Administration’s Export Control Reform Initiative. These changes include increasing the amount of time a temporary export may remain abroad under a requested extension and allowing 600 series parts, components, accessories, and attachments to be exported on a one-to-one replacement basis.

The modifications to the license exceptions reflect a desire to ensure that less-sensitive dual-use items that are moving under the EAR from the U.S. Munitions List (“USML”) are subject to less control than before.<sup>1</sup> This is consistent with the general intent of the Export Control Reform Initiative to loosen restrictions on certain military-related items that do not warrant the strict controls imposed by the USML, as well as streamlining the export control system. As the government explains, “[B]ecause items subject to the EAR are less militarily significant than those subject to the ITAR, EAR exceptions should not be more restrictive than comparable ITAR exemptions.”

This alert is the seventh in our series of alerts exploring the details of export control reform. In it, we focus on the changes to two of the license exceptions available under the EAR—TMP and RPL—as a result of the reform initiative. The license exception experiencing the most significant change—the Strategic Trade Authorization (“STA”) exception—was detailed in our sixth alert, “Strategically narrow: revised export License Exception STA.” An upcoming alert will cover changes to the final two revised license exceptions: GOV and TSU.

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<sup>1</sup> The EAR is administered by the Bureau of Industry and Security within the Department of Commerce. The USML is part of the International Traffic in Arms Regulations (“ITAR”) administered by the Directorate of Defense Trade Controls (“DDTC”) within the Department of State.

## License Exception TMP—temporary imports, exports, and reexports

License Exception TMP, found at EAR § 740.9, covers temporary imports, exports, and reexports. The most common uses for this license exception are temporary exports of tools of trade, kits consisting of replacement parts or components, items for exhibition and demonstration, and items to a U.S. person's foreign subsidiary, affiliate, or facility abroad. The revised License Exception TMP includes changes both cosmetic and substantive, though much of the substance of the license exception is unchanged. Over the years, License Exception TMP had become somewhat unwieldy from various changes to it. As part of the revisions to License Exception TMP, BIS reorganized the license exception to streamline it and make it easier to understand and apply. Rather than adding in sections or subsections to reflect the revisions to License Exception TMP, the revised rule replaces two significant sections of the exception—paragraphs (a) and (b).

One of the substantive changes to the rule involves temporary exports to a U.S. person's foreign subsidiary, affiliate, or facility abroad. The current regulations allow for components, parts, tools or test equipment to be exported by a U.S. person to its subsidiary, affiliate, or facility located in a Country Group B country and owned or controlled by the U.S. person. The exception requires that the exported components, parts, tools, accessories, or test equipment be used to manufacture, assemble, test, produce, or modify items. In addition, for the license exception to apply, the components, parts, tools, or test equipment cannot be transferred within the country of export or reexported from the subsidiary, affiliate, or facility without prior authorization from BIS. The revised regulations remove the restriction that the subsidiary, affiliate, or facility be located in a country listed in Country Group B. Now, the subsidiary, affiliate, or facility can be located in any country, with the exception of E:1 countries (Cuba, Iran, North Korea, Sudan, and Syria). This change will not have a significant effect on most exporters, as Country Group B already includes more than 175 countries.

The revised License Exception TMP also increases the time period a temporary export, reexport, or transfer can remain abroad. The rule continues to require that items, if not consumed or destroyed in the normal course of authorized use abroad, be returned as soon as practicable and no later than one year from the export, reexport, or transfer. Under the revised rule, however, the exporter or reexporter may request an extension from BIS for an additional three years, allowing the item to be abroad for up to four years. The prior rule allowed an extension of only six additional months. This change corresponds with temporary export licenses under the ITAR for unclassified defense articles that will be exported for a period of less than four years and then returned to the United States.

## License Exception RPL—replacement of parts and equipment

The changes to License Exception RPL are in tandem with the addition of the 600 series items to the EAR. The 600 series is comprised of items that were formerly listed on the USML and were subject to the jurisdiction of the DDTC. This license exception, found at EAR § 740.10, authorizes exports and reexports related to one-for-one replacement of parts or servicing and replacement of equipment. Unlike License Exception TMP, License Exception RPL did not undergo a significant streamlining. This is because “BIS has concluded that a completely revised RPL should be proposed separately as part of a retrospective regulatory review, using public comments already received as part of the basis for the new proposal.” The current revisions are intended to account for the new 600 series items, but exporters should expect the license exception to undergo another revision in the near future.

In order to reflect the 600 series items, the government expanded the scope of License Exception RPL to include components, accessories, and attachments, not just parts. The revised license exception states that “600 series’ parts, components, accessories and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories or attachments that were: lawfully exported from the United States, or lawfully reexported.” The revisions add that 600 series parts, components, accessories, and attachments may not be exported or reexported to the newly added Country Group D:5 under License Exception RPL. This country group contains countries against which the United States has arms embargoes.<sup>2</sup>

Revised License Exception RPL also allows for replacements for defective or unacceptable U.S.-origin equipment where the commodity or software is subject to the EAR. The license exception will cover replacements for any less-sensitive dual-use items that are being moved from the USML to the CCL. This also means that the exception applies to repair of items that previously had been exported under an ITAR license that now fall under the jurisdiction of the EAR.

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This alert is the seventh in a series of alerts examining how U.S. Export Control Reform may affect exporters. Click below to read previous alerts in this series:

- [Strategically narrow: revised export License Exception STA](#) (June 6, 2013)
- [“Special” Delivery: The Export Control Reform Initiative and the creation of a single, regulatory definition of “specially designed”](#) (May 31, 2013)
- [Getting your ducks in a row: exporters should prepare now for changes in export controls set for October](#) (May 16, 2013)
- [A roadmap of how to navigate the recent changes to the U.S. Munitions List \(USML\) and the Commerce Control List \(CCL\)](#) (May 10, 2013)
- [The 600 Series: As part of Export Control Reform, the U.S. government shifts former Munitions List items to a new category on the Commerce Control List](#) (May 1, 2013)
- [Spare change and spare parts: U.S. government publishes rules implementing Export Controls Reform Initiative](#) (April 17, 2013)

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<sup>2</sup> The new Country Group D:5 includes: Afghanistan, Belarus, Burma, China, Democratic Republic of Congo, Cote d’Ivoire, Cuba, Cyprus, Eritrea, Fiji, Haiti, Iran, Iraq, North Korea, Lebanon, Liberia, Libya, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, and Zimbabwe.