

CLIENT ALERT

State Expressly Authorizes Certain Hand-Carried Exports of Technical Data

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The Directorate of Defense Trade Controls (DDTC) has finally put to rest a long-festering interpretive question arising out of the International Traffic in Arms Regulations'(ITAR) 124.5(b)(9) license exemption, which previously permitted certain exports of technical data "sent by a U.S. corporation," but did not specifically address hand-carries. The revised exemption ([75 Fed. Reg. 52625](#) (Aug. 27, 2010)), nearly identical to the November 2009 proposed rule, expressly authorizes hand-carried technical data exports meeting the limitations of the rule - including exports of technical data stored on laptops.

The amended license exemption permits exports of technical data (including classified data), in any media or format, when sent or taken by a U.S.-person employee of a U.S. corporation or U.S. government agency, to a U.S. person employed by the same corporation or to a U.S. government agency located outside the United States. The exemption only applies if: (1) the data will be "used outside the United States solely by a U.S. person;" (2) the recipient is an employee of the U.S. government or is "directly employed by the U.S. corporation and not by a foreign subsidiary;" and (3) any classified information is exported in accordance with the NISPOM. The exemption may not be used for travel to proscribed destinations under section 126.1 of the ITAR, to provide technical assistance, or for foreign production purposes.

While this rule provides long-awaited confirmation that 124.5(b)(9) permits hand-carried technical data exports, exporters must nevertheless ensure that each use of the exemption complies with the ITAR generally - including the 123.22(b)(3)(iii) reporting requirement - and does not run afoul of the provision's limitations.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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