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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 740

[Docket No. 200718-0196]

RIN 0694-AI14

Revision to the Export Administration Regulations: Suspension of License Exceptions for Hong Kong

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to suspend the availability of all License Exceptions for Hong Kong that provide differential treatment as compared to those available to the People's Republic of China (PRC). As announced on BIS's website on June 30, 2020, these License Exceptions are no longer available for exports and reexports to Hong Kong, and transfers within Hong Kong, of all items subject to the EAR. BIS is taking this action as part of revised U.S. policy toward Hong Kong in response to the newly imposed security measures on Hong Kong by the Chinese Communist Party. These new security measures undermine Hong Kong's autonomy and thereby increase the risk that sensitive U.S. technology and items will be illegally diverted to

unauthorized end uses and end users in the PRC or to unauthorized destinations such as Iran or North Korea. This rule includes saving clauses for items, including for deemed exports.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of National Security and Technology Transfer Controls, patricia.muldonian@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

The Chinese Communist Party of the People's Republic of China (PRC) has imposed new measures that undermine Hong Kong's autonomy. As a result, the United States Government (USG) has revised its policy toward Hong Kong, including treatment of Hong Kong under the EAR. Undermining Hong Kong's autonomy increases the risk that sensitive U.S. technology and items will be illegally diverted to unauthorized end uses and end users in the PRC or to unauthorized destinations such as Iran or North Korea.

As the USG finds that it can no longer distinguish between the export of controlled items to Hong Kong and the PRC, the United States is removing eligibility for License Exceptions for exports or reexports to, or transfers within, Hong Kong that are not available for exports and reexports to the PRC or transfers within the PRC. This action targets the PRC regime, not residents of Hong Kong. The Bureau of Industry and Security (BIS), in consultation with other executive branch agencies, continues to review the EAR to assess whether additional amendments are warranted.

Amendments to the EAR

In this final rule, BIS amends the Export Administration Regulations, 15 CFR Parts 730 – 774 (EAR), to suspend the availability of the License Exceptions for exports and reexports to Hong Kong, and transfers within Hong Kong of all items subject to the EAR that provide differential treatment from the license exceptions available to the PRC.

BIS is taking this action pursuant to § 740.2(b) of the EAR (15 CFR 740.2(b)), which provides that all License Exceptions are subject to revision, suspension, or revocation, in whole or in part, without notice. The following License Exceptions are suspended to the extent they allow exports or reexports to or from Hong Kong, or transfers within Hong Kong, when they may not be used for exports or reexports to the PRC, or transfers within the PRC:

- 1) Shipments of Limited Value (LVS) (§ 740.3);
- 2) Shipments to Group B Countries (GBS) (§ 740.4);
- 3) Technology and Software under Restriction (TSR) (§ 740.6);
- 4) Computers, Tier 1 only (APP) (§ 740.7(c));
- 5) Temporary Imports, Exports, Reexports, and Transfers (in-country) (TMP) (§ 740.9(a)(11), (b)(2)(ii)(C), and (b)(5));
- 6) Servicing and Replacement Parts and Equipment (RPL) (§ 740.10(a)(3)(viii), (a)(4), (b)(1) except as permitted to Country Group D:5, and (b)(3)(i)(F) and (ii)(C));
- 7) Governments (GOV) (§ 740.11(c)(1) – Cooperating Governments only);
- 8) Gift Parcels and Humanitarian Donations (GFT) (§ 740.12);
- 9) Technology and Software Unrestricted (TSU) (§ 740.13);
- 10) Baggage (BAG) (§ 740.14) (except as permitted by § 740.14(d));
- 11) Aircraft, Vessels, and Spacecraft (AVS) (§ 740.15(b)(1), (b)(2), (c));

12) Additional Permissive Reexports (APR) (§ 740.16(a) and (j)); and

13) Strategic Trade Authorization (STA) (§ 740.20(c)(2)).

Reexports of items subject to the EAR from Hong Kong under License Exception APR § 740.16(a) are also restricted.

In this final rule, BIS also amends paragraph (a) of § 740.2 – Restrictions on all License Exceptions – by adding a new paragraph (a)(23) to identify the suspension of the availability of these License Exceptions for exports to Hong Kong, reexports to and from Hong Kong, and transfers within Hong Kong of all items subject to the EAR.

A License Exception is an authorization contained in Part 740 of the EAR that allows exports, reexports, or transfers (in-country) under stated conditions of items subject to the EAR that would otherwise require a license. This includes License Exception APR which was previously also available for reexports from Hong Kong.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. Sections 4801–4852. ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated significant under Executive Order 12866. This final rule will protect the national security and foreign policy objectives of the United States by addressing the increased risk of illegal diversion of sensitive U.S. technology and other items to unauthorized end uses and end users in China or to unauthorized destinations such as Iran or North Korea.

This final rule is not subject to the requirements of Executive Order 13771 (82 FR 9339; February 3, 2017) because it is issued with respect to a national security function of the United States. The cost-benefit analysis required pursuant to Executive Orders 12866 and 13563 indicates that this rule is intended to improve national security as its primary direct benefit. Specifically, suspending license exceptions for Hong Kong serves U.S. national security interests and foreign policy objectives. Accordingly, this rule meets the requirements set forth in the April 5, 2017 OMB guidance implementing Executive Order 13771, regarding what constitutes a regulation issued “with respect to a national security function of the United States,” and is, therefore, exempt from the requirements of Executive Order 13771.

This rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act Requirements

Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections currently approved by OMB under control numbers 0694-0088, Simplified Network Application Processing System, and 0694-0137, License Exceptions and Exclusions. These collections include, among other things, license applications, which carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. This rule is expected to increase the number of licenses required as license exception availability is suspended, including for deemed exports and reexports, but this increase is not expected to exceed the existing estimates currently associated with OMB control number 0694-0088. A minimal decrease in burden is expected for 0694-0137.

Administrative Procedure Act and Regulatory Flexibility Act Requirements

Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801-4852), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not

applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared

Savings Clauses

Shipments of items that are removed from eligibility for a License Exception as a result of this action and were on dock for loading, on lighter, laden aboard an exporting or transferring carrier, or en route aboard a carrier to a port of export or reexport on June 30, 2020, pursuant to actual orders for export to Hong Kong, reexport to or from Hong Kong, or transfer within Hong Kong, may proceed to their destination under the previous License Exception eligibility.

Similarly, the deemed export/reexport transactions involving Hong Kong persons authorized under License Exception eligibility prior to June 30, 2020, may continue to be authorized under such provision until August 28, 2020, after which such transactions will require a license. Exporters, re-exporters, or transferors (in-country) availing themselves of this 60-day savings clause must maintain documentation demonstrating that the Hong Kong national was hired and provided access to technology eligible for Hong Kong under part 740 prior to June 30, 2020.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, part 740 of the Export Administration Regulations (15 CFR parts 730 -774) is amended as follows:

PART 740 – LICENSE EXCEPTIONS

1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

2. Section 740.2 is amended by revising paragraphs (a)(12) and (13) introductory text and by adding new paragraph (a)(23) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a)***

(12) The item is described in a 9x515 or “600 series” ECCN and is destined to, shipped from, or was manufactured in a destination listed in Country Group D:5 or Hong Kong (see Supplement No.1 to part 740 of the EAR), except that:

* * * * *

(13) “600 series” items that are controlled for missile technology (MT) reasons may not be exported, reexported, or transferred (in-country) under License Exception STA (§ 740.20 of the EAR). Items controlled under ECCNs 9D610.b, 9D619.b, 9E610.b, or 9E619.b or .c are not eligible for license exceptions except for License Exception GOV (§ 740.11(b)(2) of the EAR). Only the following license exceptions may be used to export “600 series” items to

destinations other than those identified in Country Group D:5 or Hong Kong (see Supplement No.1 to part 740 of the EAR):

* * * * *

(23) The item is subject to the EAR and is for export to Hong Kong, reexport to Hong Kong or transfer (in-country) within Hong Kong under License Exceptions LVS – Shipments of Limited Value (§ 740.3); GBS – Shipments to Group B Countries (§ 740.4); TSR – Technology and Software under Restriction (§ 740.6); APP – Computers, Tier 1 only (§ 740.7(c)); TMP Temporary Imports, Exports, Reexports, and Transfers (in-country) – (§740.9(a)(11) and (b)(2)(ii)(C) and (b)(5) only); RPL – Servicing and Replacement Parts and Equipment (§ 740.10(a)(3)(viii), (a)(4), (b)(1) except as permitted to Country Group D:5, and (b)(3)(i)(F) and (ii)(C) only); GOV – Cooperating Governments only (§ 740.11(c)(1)); GFT – Gift Parcels (except as permitted by § 740.12(a)(3)); TSU Technology and Software Unrestricted – only § 740.13(f); BAG – Baggage (except as permitted by § 740.14(d)); AVS Aircraft, Vessels, and Spacecraft – (§ 740.15(b)(1), (b)(2), (c), and (f) only); APR – Additional Permissive Reexports (§ 740.16(a) and (j)); and STA – Strategic Trade Authorization (§ 740.20). Reexports of items subject to the EAR from Hong Kong under

License Exception APR § 740.16(a) are also restricted.

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Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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