



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 748, and 762

[Docket No. 161230999-7013-01]

RIN 0694-AH11

Support Document Requirements with Respect to Hong Kong

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule requires persons intending to export or reexport *to* Hong Kong any item subject to the Export Administration Regulations (EAR) and controlled on the Commerce Control List (CCL) for national security (NS), missile technology (MT), nuclear nonproliferation (NP column 1), or chemical and biological weapons (CB) reasons to obtain, prior to such export or reexport, a copy of a Hong Kong import license or a written statement from the Hong Kong government that such a license is not required.

This rule also requires persons intending to reexport *from* Hong Kong any item subject to the EAR and controlled for NS, MT, NP column 1, or CB reasons to obtain a Hong Kong export license or a statement from the Hong Kong government that such a license is not required.

DATES: The rule is effective April 19, 2017.

FOR FURTHER INFORMATION CONTACT: Tracey Patts, Foreign Policy Division, Bureau of Industry and Security, Phone: (202) 482-4252.

SUPPLEMENTARY INFORMATION:

Background

The government of the Hong Kong Special Administrative Region maintains an import and export control system. The “Import and Export (Strategic Commodities) Regulations” are an integral part of that system. Schedules in those regulations identify articles that may not be imported or exported without a license from Hong Kong’s Director-General of Trade and

Industry. Those schedules and much of the CCL are based on the control lists published by four multilateral export control regimes. Export control classification number (ECCN) entries on the CCL identify one or more reason(s) for which listed items are controlled. Four of these reasons for control are based on the four multilateral export control regimes, as follows: The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (NS on the CCL), the Missile Technology Control Regime (MT on the CCL), the Nuclear Suppliers Group (NP column 1 on the CCL), and the Australia Group (CB on the CCL). Because the Hong Kong schedules and most of the CCL are developed from these same four sources, large portions of both sets of documents cover the same items.

The government of the Hong Kong Special Administrative Region uses information from the import licenses that it issues to identify articles that require an export license. This rule imposes new support documentation requirements affecting items subject to the EAR that are exported or reexported to Hong Kong or are reexported from Hong Kong. BIS is taking this action to provide greater assurance that U.S. origin items that are subject to the multilateral control regimes noted above will be properly authorized by the United States to their final destination, even when those items first pass through Hong Kong. This rule does not impose any new license requirements.

Exports and reexports to Hong Kong.

This rule requires exporters and reexporters using a BIS license or a license exception to export or reexport to Hong Kong items controlled for NS, MT, NP column 1, or CB reasons to obtain certain documents that verify the items' status under the Hong Kong Import and Export (Strategic Commodities) Regulations. The exporter or reexporter must obtain from its client or consignee a copy of a valid import license issued to the Hong Kong importer by the Hong Kong

government authorizing import of the item(s) to be shipped to Hong Kong, or a copy of a written statement issued by the Hong Kong government stating that no import license is required to import the item(s) into Hong Kong. The exporter or reexporter must have the copies in its possession, and any Hong Kong import license must not have expired at the time of the export or reexport to Hong Kong. For purposes of this requirement, a written statement issued by the Hong Kong government includes either a written communication to a license applicant informing the applicant that the item does not require a license or a statement available to the general public (including a statement on a website by the Hong Kong government) that a license is not required for the item.

Reexports from Hong Kong.

This rule also requires reexporters in Hong Kong intending to reexport from Hong Kong items subject to the EAR that are controlled for NS, MT, NP column 1, or CB reasons to obtain from the Hong Kong government a license authorizing export from Hong Kong of the items, or a copy of a written statement issued by the Hong Kong government stating that no export license is required from Hong Kong to export the items. If a Hong Kong license is issued, the reexport must be in accordance with the terms of that license and must be completed during the validity period of the Hong Kong-issued export license. For purposes of this requirement, a written statement issued by the Hong Kong government includes a written communication to a license applicant informing the applicant that the item does not require a license or a statement available to the general public (including a statement on a website by the Hong Kong government) that a license is not required for the item.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. 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, distributive impacts, and equity). This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person 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 rule includes an expansion of an existing collection of information approved under OMB control number 0694-0093 – Import Certificate and End-User Certificate, for which the current burden estimates are 5,872 responses and 1,618 hours annually. BIS expects that this rule will increase the number of transactions for which exporters and reexporters will have to acquire support documentation by about 12,000 transactions annually,

with a corresponding increase in the number of burden hours. Send comments regarding this burden estimate or any other aspect of this collections of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by e-mail at *jseehra@omb.eop.gov* or by fax to (202) 395-7285 and to Hillary Hess, BIS, at *hillary.hess@bis.doc.gov*.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a 30-day delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Therefore, we are issuing this action as a final rule. This action will foster effective administration of and compliance with the export control regulations of the Hong Kong Special Administrative Region with respect to U.S.-origin items. Those regulations apply to items that are listed on the control lists of multilateral export control regimes of which the United States is a member. Effective control over such items imported into Hong Kong by the government of the Hong Kong Special Administrative Region serves the United States' national security and foreign policy interests directly, because many of these items are controlled due to their national security significance or their potential to be used in activities that would promote proliferation of weapons of mass destruction or in regional destabilizing activities.

This rule also enhances the effectiveness of the multilateral control regimes, which serves United States interests in two ways. First, widespread consistent implementation of those regime-based export controls promotes peace and stability throughout the world generally.

Second, this rule signals to other nations, regime member states and non-members alike, the United States' determination that distribution of U.S. origin items throughout the world will be in accordance with its regime commitments.

Moreover, BIS expects that in nearly all instances, this rule requires only that a party in Hong Kong obtain a license that is already required under Hong Kong law. In those instances, no new action is required by persons reexporting from Hong Kong and the only new action with respect to exports and reexports to Hong Kong is for the person in Hong Kong to send a copy of the license to its supplier. In the limited instances where the CCL covers items with one or more of the reasons for control noted above that are not listed on the Hong Kong control, such as when the Hong Kong Government and the United States Government update their control lists in response the changes in the multilateral export control regime lists at different times, the party in Hong Kong will have to obtain a written statement from the Hong Kong Government that a Hong Kong license is not required. However, the rule gives the party in Hong Kong several options for providing the required information. Various documents, including the Hong Kong government's specific response to a license application informing the applicant that a license is not required and more general statements downloaded from a Hong Kong Government website, will be adequate to fulfill this requirement. One document may be used for multiple shipments as long as the document remains accurate.

Despite the importance of prompt publication and effectiveness to our foreign policy goals as noted above, BIS recognizes that some exporters and reexporters will need time to obtain the required documentation from their customers for all transactions subject to this rule. Therefore, the effective date of this final rule is ninety days after publication.

List of Subjects

15 CFR Parts 740 and 748

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

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.</LSTSUB>

For the reasons set forth in the preamble, parts 740, 742, and 762 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 740—LICENSE EXCEPTIONS

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

Authority: 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; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

2. In § 740.2, add paragraphs (a)(19) and (20) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(19) The exporter or reexporter to Hong Kong of any item subject to the EAR and controlled on the CCL for NS, MT, NP Column 1, or CB reasons has not received one of the following with respect to the item:

(i) A copy of an import license issued to the Hong Kong importer by the Government of the Hong Kong Special Administrative Region, pursuant to the Hong Kong Import and Export (Strategic Commodities) Regulations, that covers all items to be exported or reexported pursuant to that license exception for which a Hong Kong import license is required and that is valid on the date of the export or reexport that is subject to the EAR; or

(ii) A copy of a written statement issued by the Government of the Hong Kong Special Administrative Region that no import license is required to import into Hong Kong the item(s) to be exported or reexported. The statement may have been issued directly to the Hong Kong importer or it may be a written statement available to the general public. The statement may be used for more than one export or reexport to Hong Kong so long as it remains an accurate statement of Hong Kong law.

(20) The reexporter from Hong Kong of any item subject to the EAR controlled on the CCL for NS, MT, NP column 1, or CB reasons has not received one of the following with respect to the item:

(i) An export license issued by the Government of the Hong Kong Special Administrative Region, pursuant to the Hong Kong Import and Export (Strategic Commodities) Regulations, that covers all items to be reexported pursuant to that license exception for which a Hong Kong export license is required and that is valid on the date of the reexport that is subject to the EAR; or

(ii) A copy of a written statement issued by the Government of the Hong Kong Special Administrative Region that no Hong Kong export license is required for the item(s) to be reexported. The statement may have been issued directly to the Hong Kong reexporter or it may be a written statement available to the general public. The statement may be used for more than one reexport from Hong Kong so long as it remains an accurate statement of Hong Kong law.

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

3. The authority citation for part 748 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *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; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

4. 748.9(b) is amended by revising the section heading, revising paragraph (b) and all notes to paragraph (b), and adding two sentences to the end paragraph of (e)(1), to read as follows:

§ 748.9 Support documents for evaluation of foreign parties in license applications and/or for promoting compliance with license requirements.

(b) *Requirements to obtain support documents for license applications.* Unless an exception in paragraph (c) of this section applies, a support document is required for certain license applications for:

(1) The People’s Republic of China (PRC) other than the Hong Kong Special Administrative Region (see §§ 748.10 and 748.11(a)(2));

(2) “600 Series Major Defense Equipment” (see § 748.11);

(3) Firearms and related commodities to member countries of the Organization of American States (see § 748.12); and

(4) The Hong Kong Special Administrative Region of the People's Republic of China (*see* § 748.13).

NOTE 1 TO PARAGRAPH (b): On a case-by-case basis, BIS may require license applicants to obtain a support document for any license application.

NOTE 2 TO PARAGRAPH (b): For End-Use Certificate requirements under the Chemical Weapons Convention, see § 745.2 of the EAR.

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(e) ***

(1) * * * The documents issued by the Government of the Hong Kong Special Administrative region that are required pursuant to § 748.13 are not used to evaluate license applications. They must be obtained before shipment and need not be obtained before submitting a license application.

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5. Redesignate § 748.13 as § 748.14 and add new § 748.13 to read as follows:

§ 748.13 Hong Kong import and export licenses.

(a) *Requirement to obtain the document*—(1) *Exports and reexports to Hong Kong.* An exporter or reexporter must obtain the documents described in paragraph (a)(1)(i) or (a)(1)(ii) of this section before using a license issued by BIS to export or reexport to Hong Kong any item subject to the EAR and controlled on the CCL for NS, MT, NP column 1, or CB reasons. Collectively, the documents issued by Hong Kong must cover all of the items to be exported or reexported pursuant to a license.

(i) A copy of an import license issued to the Hong Kong importer by the Government of the Hong Kong Special Administrative Region, pursuant to the Hong Kong Import and Export (Strategic Commodities) Regulations, that covers the items to be exported or reexported pursuant to that BIS license for which a Hong Kong import license is required and that is valid on the date of the export or reexport that is subject to the EAR; or

(ii) A copy of a written statement issued by the Government of the Hong Kong Special Administrative Region that no import license is required to import into Hong Kong the item(s) to be exported or reexported to Hong Kong. The statement may have been issued directly to the Hong Kong importer or it may be a written statement available to the general public. The statement may be used for more than one export or reexport to Hong Kong so long as it remains an accurate statement of Hong Kong law.

(2) *Reexports from Hong Kong.* No license issued by BIS may be used to reexport from Hong Kong any item subject to the EAR controlled on the CCL for NS, MT, NP column 1, and/or CB reasons unless the reexporter has received either:

(i) An export license issued by the Government of the Hong Kong Special Administrative Region, pursuant to the Hong Kong Import and Export (Strategic Commodities) Regulations, that covers all items to be reexported pursuant to that BIS license for which a Hong Kong export license is required and that is valid on the date of the reexport that is subject to the EAR; or

(ii) A copy of a written statement issued by the Government of the Hong Kong Special Administrative Region that no export license is required from Hong Kong for the item(s) to be reexported. The statement may have been issued directly to the Hong Kong reexporter or it may be a written statement available to the general public. The statement may be used for more than one reexport from Hong Kong so long as it remains an accurate statement of Hong Kong law.

(b) *Recordkeeping*. The documents required to be obtained by paragraph (a) of this section must be retained and made available to the U.S. Government upon request in accordance with part 762 of the EAR.

PART 762—RECORDKEEPING

6. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

7. In § 762.2 remove the word “and” from the end of paragraph (b)(52); remove the period from the end of paragraph (b)(53) and add in its place a semicolon followed by the word “and”; add paragraph (b)(54) to read as follows:

§ 762.2 Records to be retained.

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(b) * * *

(54) § 748.13, Certain Hong Kong import and export licenses.

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Dated: January 6, 2017.

Kevin J. Wolf,
Assistant Secretary for Export Administration.

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