

Insights

HAS YOUR COMPLIANCE PROGRAM BEEN ADAPTED TO ACCOUNT FOR RECENT CHANGES TO U.S. EXPORT CONTROLS?

KEEPING UP WITH THE CHANGES, PART 2

Nov 09, 2020

In addition to the many changes targeted specifically at national security concerns related to China, Russia, and Venezuela, the Bureau of Industry and Security (“BIS”) has implemented a number of additional regulatory changes with broader destination impact, including exports to Hong Kong SAR. Some of these additional changes are described here. As noted in our [prior alert](#), it is critical to ensure that your compliance program is keeping up with the changes.

Elimination of license exception CIV

Taking effect on June 29, 2020, BIS issued a final rule eliminating license exception CIV, which in § 740.5 of the EAR previously allowed the export of certain items controlled for National Security (NS) reasons that were destined to civil end-users in Country Group D:1 for civil end-uses. Unless a different license exception authorizes the particular export, a license from BIS is now required for all such exports. Entities should ensure that their compliance procedures have been updated so that license exception CIV will not be relied upon going forward for exports and that any required licenses are applied for in a timely manner.

Suspension of the availability of license exceptions for exports to Hong Kong SAR when such license exceptions are not available for exports to China

Just one day later, BIS issued guidance clarifying that it was suspending the use of any license exception for the export or reexport to, or the in-country transfer within, Hong Kong SAR where such license exception would not be available if the export, reexport, or in-country transfer involved China. This action was formalized pursuant to a rule published on July 31, 2020. In lieu of continued use of a license exception, a license must be obtained for any future such activities. Entities should ensure that their compliance programs take into account whether license exceptions continue to be available for exports or reexports to, or in-country transfers within, Hong Kong SAR and, if not, ensure that license applications are applied for timely.

Revision to the license review policy for exports of water cannons and items controlled for Crime Control (CC) reasons

On October 6, 2020, the US Department of Commerce issued a pair of final rules revising the licensing policy for exports of water cannon systems and items controlled for Crime Control (CC) reasons. With respect to water cannons, the rule makes water cannon systems for riot or crowd control, and specially designed parts and components therefor, subject to the Crime Control (CC) reason for control, so that the license review policy for CC items will apply for export activities involving these items. Among the stated purposes of the change is to enable the US Government to more effectively control exports of water cannons to the Hong Kong SAR Police Force. The second final rule revised the licensing policy associated with CC items to specify that BIS will consider (a) whether there is civil disorder in the country or region of destination and (b) whether there is a risk that the items will be used to engage in or enable violations or abuses of human rights, including through violations and abuses involving censorship, surveillance, detention, or excessive use of force. The rule also clarified that BIS will assess human rights considerations when making licensing determinations in connection with items subject to other reasons for control (except for items controlled for Short Supply (SS) reasons). Entities should take these additional considerations into account when preparing license applications.

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