



# FedEx Regulatory Alerts & Updates

## Regulatory Alert: U.S. Export Control Changes for China, Russia and Venezuela

June 11, 2020

### Background

On April 28, 2020, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) published two new regulations that extend BIS's oversight of the export, re-export and transfer (in-country) of certain commodities, software and technology ("items") that are subject to the U.S. Export Administration Regulations (EAR).

The effective date of the two new rules is Monday, June 29, 2020.

### What are the primary impacts with these final rules?

#### 1. Electronic Export Information (EEI) filing changes

Effective June 29, 2020, U.S. exports destined for China (CN), Russia (RU) and Venezuela (VE) will require an EEI to be filed in the Automated Export System (AES), regardless of value. The EEI filing must include the correct Export Control Classification Number (ECCN).

The rules do retain exemptions from filing if the shipment:

- Is eligible for License Exception GOV
- Is eligible for exceptions in the Export Administration Regulations and Foreign Trade Regulations or
- Consists only of items that are classified as EAR99

#### 2. Expansion of export, re-export and transfer (in-country) controls for military end-intended use or military end-users in CN, RU or VE

The new rule expands the restrictions on exports for military end-use and military end-users in CN, RU or VE by expanding the:

- Licensing requirements for CN to include "military end-users," in addition to "military end-use";
- List of items on the Commerce Control List (CCL) for which the licensing and review policy for CN, RU and VE apply; and
- Definition of "military end-use" to include any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development or production of military items

### 3. Elimination of license exception Civil End Users (CIV)

The new regulations remove license exception CIV for national security-controlled items that will be exported, re-exported or transferred (in-country) to Country Group D:1 (as noted in Supplement No. 1 to Part 740 of the EAR, found in the References section below). Therefore, beginning June 29, 2020, exporters will no longer be able to ship national security-controlled items to D:1 countries without a BIS review and license.

## Q&A

### **Q1: Will ALL exports from the U.S. to China, Russia or Venezuela now require an EEI submission?**

A1: No. EAR99 items will NOT require an EEI filing if they are under the \$2,500 threshold set forth in 15 CFR 30.37(a).

Also, an EEI is not required if the shipment is subject to license exception GOV or filing exemptions in the Export Administration Regulations and Foreign Trade Regulations.

### **Q2: If my shipment includes a mix of ECCN and EAR99 items, can I still use the AES exemptions for the EAR99 items?**

A2: Since this is one shipment containing BOTH ECCN and EAR99 articles, the answer is No. The ECCN items still must be filed in AES and the Internal Transaction Number (ITN) indicated on the international air waybill (IAWB).

### **Q3: What documentation requirements apply when shipping with FedEx Express to CN, RU and VE?**

A3: Beginning June 29, 2020, customers shipping from the U.S. to CN or RU must provide FedEx with:

- EEI filing ITN
- ECCN or EAR99 classification for each item(s) or
- Applicable filing exemption

VE is currently not served by FedEx for U.S. exports.

### **Q4: Will FedEx Express still be able to file U.S. exporter EEI information and obtain the ITN for a shipment to these countries?**

A4: Yes, the EEI Agent File team still operates and can file EEI data for exports to RU and CN. VE is currently not served by FedEx for U.S. exports.

However, the U.S. exporter still must fully complete the EEI Agent File form for the filing, including any ECCN requirements.

To get a streamlined EEI filing and shipping label preparation process that meets regulatory compliance when you ship via FedEx Express, customers can access the FedEx AgentFile tool:

1. Go to FedEx Global Trade Manager website: <https://www.fedex.com/en-us/shipping/electronic-export-information.html#export-agentfile>
2. Click on "File an EEI" before preparing your shipping label

### **Q5: What is an ECCN?**

A5: ECCN stands for Export Control Classification Number; it is used to classify goods, technology and software to determine whether an export license is required. If you need assistance with classifying your product or understanding these requirements, you should contact the export control officer at your company. BIS also has counselors that can assist you:

- Eastern Regional Office: 202.482.4811
- Western Regional Office: 949.660.0144
- Northern CA Branch: 408.998.8806

**Q6: Who is responsible for determining whether a shipment is required to have a BIS license?**

A6: **The exporter is responsible for ensuring that any export complies with the EAR.** As such, the exporter must classify the goods, technology or software being shipped under the Commerce Control List to determine whether an export license is required.

For shipments to CN, RU, or VE, the exporter is also responsible for reviewing Part 744.21 to determine whether the military end-user or end-user restrictions apply to that export (see the References section below).

**Q7: Will shipments of foreign goods that transit the United States in-bond be subject to these licensing requirements if destined for a military end-use or end-user?**

A7: No. The new BIS rules do not apply to goods being shipped from other countries which are transiting through the United States in-bond.

**Q8: Do these new rules also apply to exports from the U.S. Virgin Islands and Puerto Rico?**

A8: Yes. In accordance with 15 CFR 30.2(a)(1)(i), these rules apply to exports to CN and RU from the U.S. Virgin Islands and Puerto Rico. VE is currently not served by FedEx for U.S. exports.

**References:**

BIS Final Rule - Expansion of Export, Re-export, and Transfer (in-Country) Controls for Military End Use or Military End Users in the People's Republic of China, Russia, or Venezuela

<https://www.govinfo.gov/content/pkg/FR-2020-04-28/pdf/2020-07241.pdf>

BIS Final Rule – Elimination of License Exception Civil End Users (CIV)

<https://www.govinfo.gov/content/pkg/FR-2020-04-28/pdf/2020-07240.pdf>

Supplement No. 1 to Part 740 of the EAR <https://www.bis.doc.gov/index.php/documents/regulation-docs/2255-supplement-no-1-to-part-740-country-groups-1/file>

15 CFR 744.21 [https://ecfr.io/Title-15/pt15.2.744#se15.2.744\\_121](https://ecfr.io/Title-15/pt15.2.744#se15.2.744_121)