



FedEx Regulatory Alerts & Updates

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

June 30, 2020

Background

On April 28, 2020, the US Department of Commerce, 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 United States (U.S.) commodities, software and technology ("items") to or within the People's Republic of China (CN), Russia (RU) and Venezuela (VE). The regulations expand the licensing requirements for military end-use or end users in CN, RU and VE and expand the Electronic Export Information (EEI) filing requirements for CN, RU and VE.

On June 24, 2020, BIS issued guidance updating the effective date of the regulation for certain ECCN-controlled items.

What are the primary impacts of these final rules?

1. Electronic Export Information (EEI) filing changes

The rules expand the EEI filing requirements in AES for U.S. exports to CN, RU and VE in two stages. First, effective June 29, 2020, U.S. exports of military end-use items listed on 15 C.F.R. Part 744, Supplement No. 2, destined for CN, RU and VE require an EEI to be filed in AES, regardless of whether a license is required or the value of the items.

Second, effective September 27, 2020, U.S. exports of all other ECCN-controlled items destined for CN, RU and VE require an EEI to be filed in AES regardless of whether a license is required or the value of the items.

The EEI filing must include the correct ECCN.

The rules do retain exceptions 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. (EAR is not an exemption, it is a classification, and indicates that a particular item is subject to EAR.)

2. Expansion of export, re-export and transfer (in-country) controls for military end use - 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. 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 US to China, Russia or Venezuela now require an EEI submission?

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

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

Q2. What items are listed on 15 C.F.R. Part 744, Supplement No. 2?

A2. Items classified by BIS as subject to military end-use license requirements in 15 C.F.R. 744.21 including the following ECCNs: 1A290, 1C990, 1C996, 1D993, 1D999, 1E994, 2A290, 2A291, 2A991, 2B991, 2B992, 2B996, 2B999, 2D290, 3A991, 3A992, 3A999, 3B991, 3B992, 3C992, 3D991, 3E991, 4A994, 4D993, 4D994, 5A991, 5A992, 5B991, 5D991, 5D992, 6A991, 6A993, 6A995, 6A996, 6C992, 7A994, 7B994, 7D994, 7E994, 8A992, 8D992, 8E992, 9A991, 9B990, 9D991, 9E991.

Note: Part 744, Supplement No. 2 is updated by BIS from time to time so check the Code of Federal Regulations for the most up to date list.

Q3. If my shipment includes a mix of ECCN and EAR99 items, can I still use the AES exemptions for the EAR99 items?

A3. 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 ITN indicated on the international air waybill (IAWB).

Q4. What documentation requirements apply when shipping with FedEx Express to CN, RU and VE?

A4. Beginning, June 29, 2020, customers shipping items on Part 744, Supplement No. 2 from the U.S. to CN or RU must file an EEI; however, FedEx will not require additional information from customers in order to create a label for these shipments. Beginning September 27, 2020, customers shipping from the U.S. to CN or RU must provide FedEx with:

- EEI filing Internal Transaction Number (ITN) or
- Applicable filing exemption

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

Q5. Will FedEx Express still be able to file US exporter EEI information and obtain the ITN for a shipment to these countries?

A5. 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 US 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 Electronic Export Information (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

Q6. What is an ECCN?

A6. 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

Q7. Who is responsible for determining whether a shipment is required to have a BIS license?

A7. **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.

Q8. Will shipments of foreign goods that transit the U.S. in-bond be subject to these licensing requirements if destined for a military end-use or end-user?

A8. No. The new BIS rules do not apply to goods being shipped from other countries which are transiting through the United States in-bond.

Q9. Do these new rules also apply to exports from the U.S. Virgin Islands and Puerto Rico?

A9. 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, Reexport, 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>

BIS Updated Guidance from June 24, 2020
<https://www.bis.doc.gov/index.php/all-articles/2-uncategorized/1686-revisions-to-eei-filing-requirements-pursuant-to-revisions-to-section-744-21-china-russia-venezuela-military-end-use-end-user-rule>

BIS Military End Use and End User FAQs June 26, 2020
<https://www.bis.doc.gov/index.php/documents/pdfs/2566-2020-meu-faq/file>

RegAlert 21-002 U.S. Export Control Changes for China, Russia and Venezuela – posted on June 11, 2020
https://www.fedex.com/content/dam/fedex/us-united-states/International/images/2020/RegAlert_21-002_U.S._BIS_Export_Control_Changes_for_China_Russia_and_Venezuela.pdf