



FedEx Regulatory Alerts & Updates

Regulatory Alert: U.S. Export Licensing Changes for Cambodia

December 10, 2021

BACKGROUND

On December 9, 2021, the U.S. State Department and the Bureau of Industry & Security (BIS) at the U.S. Commerce Department issued separate Final Rules regarding the availability of export licenses and export license exceptions when exporting, re-exporting or transferring military or dual-use items to Cambodia. Both Final Rules are effective December 9, 2021.

WHAT ARE THE IMPACTS OF THESE FINAL RULES?

1. U.S. State Department Final Rule

The Department of State (DOS) is amending the International Traffic in Arms Regulations (ITAR) to add Cambodia in the list of countries for which it is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services. This change reflects that it is U.S. policy to deny all licenses and other approvals to export and import defense articles and defense services destined for or originating in Cambodia, except as otherwise provided in the DOS Final Rule.

The policy of denial applies to licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in Cambodia, with 2 specific exceptions cited in Part 126.1 of the ITAR found in Table 2 of that subsection.

2. U.S. Commerce Department Final Rule

The Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to apply more restrictive treatment to exports and re-exports to, and transfers within, Cambodia of items subject to the EAR. BIS stated it is taking this action to address recent actions by the Government of Cambodia that are contrary to the national security and foreign policy interests of the United States.

These restrictions are to ensure that items subject to the EAR are not available to Cambodia's military and military-intelligence services without prior review by the U.S. Government. Cambodia is being added to the list of countries subject to a more stringent review policy for license applications involving national security-controlled items. The rule makes four broad changes to the EAR to reflect BIS's more restrictive licensing approach to Cambodia. It adds Cambodia to:

1. The list of countries subject to the licensing policy in § 742.4(b)(7),
2. The list of countries subject to military end use and end user controls in § 744.21,
3. The list of countries subject to military intelligence end use and end user controls in § 744.22, and
4. The list of countries subject to a U.S. arms embargo under Country Group D:5.

Q & A

Q1. Will exports, re-exports and transfers in-country to Cambodia require a license?

A1. Customers exporting, re-exporting and transferring U.S. origin items that have a Commerce ECCN classification or State U.S. Munitions List (USML) classification will have to review their analysis of the available licenses and license exceptions. This may include applying for a license from the Commerce Department or State Department.

Q2. What is the USML?

A2. USML stands for the U.S. Munitions List; it is a list of articles, services and technical data designated by the State Department as defense articles or services. Exporters who intend to export a defense article or service must obtain a license from the State Department or qualify for an exemption under the applicable regulations.

Q3. What are the 2 specific exceptions the DOS will allow for Cambodia licenses?

A3. The 2 exceptions are found in paragraph (o) in Part 126.1 of the ITAR: It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in Cambodia, except that a license or other approval may be issued, on a case-by-case basis, for defense articles and defense services in furtherance of conventional weapons destruction or humanitarian mine action activities.

Q4. Will FedEx Express transport ITAR controlled goods to Cambodia?

A4. Generally, licenses are no longer available to import ITAR controlled goods into Cambodia. However, for Cambodia and any other country listed on Table 2 of paragraph D2 in ITAR Part 126.1 FedEx Express can transport their goods allowed to move under any specific exception using our deferred service options.

Q5. Who is responsible for determining whether a shipment is required to have an export license?

A5. The exporter is responsible for ensuring that any export complies with U.S. laws and regulations. As such, the exporter must classify the goods, technology or software being shipped to determine whether an export license is required.

REFERENCES

BIS Final Rule

<https://www.federalregister.gov/documents/2021/12/09/2021-26633/revision-of-controls-for-cambodia-under-the-export-administration-regulations>

DOS Final Rule

<https://www.federalregister.gov/documents/2021/12/09/2021-26590/international-traffic-in-arms-regulations-addition-of-cambodia-to-list-of-proscribed-countries>

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