



FedEx Regulatory Alerts & Updates

Regulatory Alert: Department of Commerce Changes for Hong Kong SAR, China

December 23, 2020

BACKGROUND

On July 14, 2020, the President signed Executive Order (E.O.) 13936 on “Hong Kong Normalization”.

Pursuant to that E.O., the Bureau of Industry and Security (BIS) amended the Export Administrative Regulations (EAR) to remove provisions that provide differential and preferential treatment for exports to Hong Kong SAR, China, re-exports to Hong Kong SAR, China and transfers (in-country) within Hong Kong SAR, China of all items subject to the EAR when compared to the treatment for such transactions to or within China.

As a result of this rule, Hong Kong SAR, China will be treated the same as China under the EAR except in certain circumstances that do not provide preferential treatment.

WHAT HAS CHANGED?

On December 23, 2020 BIS published a Final Rule in the Federal Register amending the Export Administration Regulations (EAR) to remove Hong Kong SAR, China as a separate destination under the EAR and include it under the destination of the People’s Republic of China.

The notice removes Hong Kong SAR, China as a separate entry on the Commerce Country Chart and from certain Country Groups, removes its eligibility to receive different license exceptions from China, and changes how Electronic Export Information filing requirements apply for exports to Hong Kong SAR, China, among other provisions. Here are summary details on changes that may impact FedEx customers:

- Supplement No. 1 to Part 738 – Commerce Country Chart removing the entry for Hong Kong SAR, China from the Commerce Country Chart. License requirements for Hong Kong SAR, China will now be governed by the Commerce Country Chart entry for China.

- Supplement No. 1 to Part 740 – Country Groups removing the entry for Hong Kong SAR, China from Country Group A:6, and from Country Group B. Hong Kong SAR, China will no longer appear separately within the Country Groups but will instead be considered a part of China. China is currently in Country Groups D:1, D:3, D:4, and D:5, and limitations or authorizations that apply to transactions involving China as part of those country groups will now also apply to transactions involving Hong Kong SAR, China. This includes any limitations that apply to China as a result of its placement in Country Group D:5, consistent with the State Department’s determination that the arms embargo on China also applies to Hong Kong SAR, China.
- Note to paragraph (b)(10) of § 758.1 - Electronic Export Information (EEI) Filing to the Automated Export System (AES) stating that the EEI filing requirement for China described in paragraph (b)(10) applies to exports to Hong Kong SAR, China for purposes of the EAR, even if the AES requirements state that the destination filed in EEI is to be listed as Hong Kong SAR, China.

A link to the full listing of the changes may be found in the Resources section below.

Q&A

Q 1 - When is this new Hong Kong SAR, China EEI policy effective?

A 1 - The rule is effective December 23, 2020.

Q 2 – Are there impacts to how exports to Hong Kong SAR, China and the required EEI filing requirements are now made by US shippers?

A 2 – Yes, the current EEI filing requirements for China apply to exports to Hong Kong SAR, China. These are found in 758.1(b)10 and became effective Dec. 23, 2020.

Q 3 - If I am exporting an item valued < \$2500 to Hong Kong SAR, China but it is now treated similar to China, do I still need to file an EEI?

A 3 - The answer depends on if the item being exported requires an ECCN. If the shipper has classified their item under the Export Administration Regulations (EAR) and determined their item requires an ECCN, then the answer is YES.

If the item being exported to Hong Kong SAR, China requires an ECCN, the EEI must be filed regardless of the value. The \$2500 value EEI exemption threshold does NOT apply in that specific scenario for Hong Kong SAR, China OR China.

If the item being exported is an EAR99 article the answer is NO..... for items valued LESS THAN \$2500. Obviously, if the U.S. exporter is exporting MORE than \$2,500 worth of ANY COMMODITY to ANY destination, then the EEI filing or applicable FTR exemption is required.

Q 4 - Who is responsible for determining whether a shipment commodity is required to have an ECCN or an export license?

A 4 - The exporter is responsible for ensuring that any export complies with US 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:

Department of Commerce Federal Register Notice - Removal of Hong Kong as a Separate Destination Under the Export Administration Regulations:

<https://www.federalregister.gov/documents/2020/12/23/2020-28101/removal-of-hong-kong-as-a-separate-destination-under-the-export-administration-regulations>

Depart of Commerce Export Clearance Requirements:

<https://www.bis.doc.gov/index.php/documents/regulation-docs/2257-part-758-export-clearance-requirements-1/file>

Executive Order 13936:

<https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kong-normalization>

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