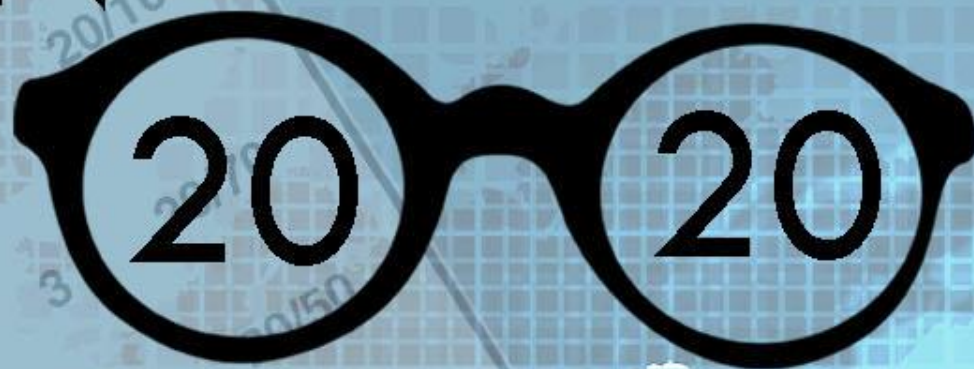


WESCCON

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Looking to the Future of Trade in a Virtual World

Export Compliance Update – Impact on Day to Day Operations

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Topics

- Regulatory Landscape
- Personal Protective Equipment (PPE) - Export
- Military End Use Rule (China, Russia, Venezuela)
- Firearms Rule
- Status of Hong Kong
- Antiboycott
- Export Manifest
- EEI Filing between US and Puerto Rico / USVI
- Routed Export Transaction NPRM

Regulatory Landscape

- The regulatory landscape in many ways is mirroring the unusual world that we are living in today. Sometimes confusing/chaotic.
- We can no longer rely on processes that have been standard for so many years
 - When do new requirements become effective?
 - Executive Orders
 - Federal Register Notices
 - Many times issued after East Coast business hours, even on Friday nights (Example PPE)
 - Federal Register is backlogged and notices are being posted after meetings occur or some regulations become effective
 - Agencies many times scrambling to bring the regulations in line with the E.O., leaving trade confused about requirements and timelines

Regulatory Landscape

BEST PRACTICES

- Be hyper-vigilant and have credible sources of information
- Assign someone to be responsible for keeping abreast of regulatory changes, including “watching” for night and weekend announcements / changes
- Have a plan for implementing changes that might become immediately effective “in between” standard business hours.

PPE (FEMA)

- PPE restrictions for export were announced by E.O. on April 3, 2020 (a Friday night after E.C. business hours)
<https://www.whitehouse.gov/presidential-actions/memorandum-allocating-certain-scarce-threatened-health-medical-resources-domestic-use/>
- It became effective the following day – a Saturday - and CBP began holding cargo that day
- CBP only had one day's advance notice prior to the E.O.
- FEMA was not familiar with the export process including the existing CBP processes
- FEMA issued their initial rule on April 10, 2020 indicating which products were covered and exceptions. It did not include an instruction on how to obtain FEMA approval
- It took 3 weeks for the process to stabilize and for the trade to get a clear written process

PPE (FEMA)

- Eventually it was determined that letters attesting to why cargo met the exceptions to the requirement would be uploaded to the CBP Document Imaging System (DIS) at the time of the Electronic Export Information (EEI) filing. Many forwarder export staff were not familiar with DIS.
- CBP reviews the Letters of Attestation and then escalates certain shipments to FEMA for final approval.
- FEMA either approves for export, purchases the product, or has it returned to the exporter.
- Once the requirements were clarified and CBP / FEMA had some shipments “under their belt”, CBP was able to greatly reduce the number of transactions that they escalate to FEMA.
- On August 10, 2020, the list of covered products was modified and the requirement was extended to December 31, 2020
<https://www.federalregister.gov/documents/2020/08/10/2020-17467/prioritization-and-allocation-of-certain-scarce-and-critical-health-and-medical-resources-for>

Military End Use (MEU)

China
Russia
Venezuela

- MEU Regulation - Expanding the Requirements for China, Russia and Venezuela
<https://www.federalregister.gov/documents/2020/04/28/2020-07241/expansion-of-export-reexport-and-transfer-in-country-controls-for-military-end-use-or-military-end>
- Includes Military End Users (not just Military End Use)
- Broadens the definition of military end use
“The EAR's current definition of military *end use* refers both to direct use (for parts, components or subsystems of weapons and other defense articles) and indirect use (weapon design and development, testing, repair and maintenance). **This rule broadens the definition of military end use** beyond any item for the “use,” “development,” or “production” **to include any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production,” of military items.”**
- Military End Use (China, Russia, Venezuela) FAQs
<https://www.bis.doc.gov/index.php/documents/pdfs/2566-2020-meu-faq>

Military End Use (MEU)

China
Russia
Venezuela

- ECCNs were added to the list of ECCNs prohibited for Military End Use.
 - 2A290, 2A291, 2B999, 2D290, 3A991, 3A992, 3A999, 3B991, 3B992, 3C992, 3D991, 5B991, 5A992, 5D992, 6A991, 6A996, and 9B990
 - Additionally, this rule expands the range of items under ECCNs 3A992, 8A992, and 9A991
- License required – presumption of denial
- See [Supplement No. 2, Part 744](#) for the full list of ECCNs
- As of September 27, 2020, **all ECCNs must be reported regardless of value** if destination is China, Russia or Venezuela, unless they qualify for license exception “GOV”
- EAR99 items do not have to be reported if value per HTS/Schedule B is \$2500 or less and no other restrictions apply
- Census Clarification on BIS filing requirements:
<https://content.govdelivery.com/accounts/USCENSUS/bulletins/2a4e09f>
- This rule does not apply to Hong Kong at this time

Firearms Rule

- Control of certain Firearms, Guns, Ammunition and Related Articles were removed from the U.S. Munitions List (USML) and assigned ECCNs under the Commerce Control List (CCL) – Published January 23, 2020 (85 FR 4136) – Effective March 9, 2020
- Added “0x5zz” ECCNs to the EAR

	enumerated or otherwise described in ECCN 0A505 or USML Category III, except equipment for the hand loading of cartridges and shotgun shells, as follows (see List of Items Controlled).	
0D501	“Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by 0A501 or 0B501.	NEW
0D505	“Software” “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by 0A505 or 0B505.	NEW
0E501	“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by 0A501 or 0B501 as follows (see List of Items Controlled).	NEW
0E502	“Technology” “required” for the “development” or “production” of commodities controlled by 0A502.	NEW
0E504	“Technology” “required” for the “development” or “production” of commodities controlled by 0A504 that incorporate a focal plane array or image intensifier tube.	NEW
0E505	“Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 0A505.	NEW

Firearms Rule

- [15 CFR 758.1\(b\)\(9\)](#) requires **EI filings** (except for license exception BAG), for 0A501.a or .b shotguns with barrel length less than 18 inches under 0A502 and ammunition under 0A505 (except for .c) **regardless of value or destination including Canada.**
- Other 0x5zz ECCNs may require EEI filing if required by any other paragraphs under 758 (b)
- New Code C63 (YFA) for 0A501.y (File regardless of value)
- Firearms FAQs
<https://www.bis.doc.gov/index.php/documents/policy-guidance/2572-faqs-for-the-commerce-category-i-iii-firearms-rule-posted-on-bis-website-7-7-20/file>

Note – all versions of NLR:
3-letter license code must
appear in license# field.

C33 – NLR
C60 – DY6 (For “600” Series sub-category .y)
C63 - YFA (For 0A501.y)

Firearms Rule

SHOTGUNS

- For shotguns, the exporter can continue to report manually or can elect the new alternative filing via AES. You must ask your customer if they are reporting utilizing the manual method or if they are expecting you to file in AES.
- Alternate filing method via AES: Special filing requirement for license exception TMP or under a BIS License for temporary export
 - Report ECCN in ECCN field as usual **AND**
 - **Show the ECCN at the beginning of the commodity description -**
 - **Followed by serial numbers, make, model and caliber**
 - **Separate commodity line item for each firearm*.**
 - Note – there are only 45 characters in this field. Certain abbreviations are allowed (see FAQ)
 - BIS is working with CBP on an alternative for multi-firearm shipments – i.e. uploading the details to DIS. This is only under discussion at this point

Firearms Rule

- 0A918, 0A984, 0A985, 0A986, 0A987, 0B986, 0E918, 0E984, and 0E987 were removed from the Commerce Control List (CCL) and replaced by 0x5zz ECCNs
- Only the replacement 0x5zz ECCNs can be used in AES. The transaction will generate a fatal error if you report one of the above old ECCNs
- If you have a license with one of the above ECCNs, you do not have ask the customer to get a new license. You can just report it with the replacement ECCN (permitted under [750.7\(c\)\(1\)\(viii\)](#))

Hong Kong

- Changing status to (somewhat) mirror China restrictions
- Executive Order July 14, 2020
<https://www.whitehouse.gov/presidential-actions/presidents-executive-order-hong-kong-normalization/>
“Sec. 3. Within 15 days of the date of this order, the heads of agencies shall commence all appropriate actions to further the purposes of this order, consistent with applicable law.”
- State and Commerce had already taken some actions:
- June 29, 2020: State Department Announcement ending exports of defense items to Hong Kong (i.e. treating Hong Kong the same as China) June 29, 2020
<https://www.state.gov/u-s-government-ending-controlled-defense-exports-to-hong-kong/>

Hong Kong

- June 30, 2020: BIS Announcement on their website advising that certain license exceptions previously allowed for Hong Kong would no longer be allowed (effective immediately)
<https://www.bis.doc.gov/index.php/documents/pdfs/2568-suspension-of-license-exceptions-for-exports-and-reexports-to-hong-kong/file>
- July 31, 2020: BIS Regulation was published codifying their June 30 announcement
<https://www.federalregister.gov/documents/2020/07/31/2020-16278/export-administration-regulations-suspension-of-license-exceptions-for-hong-kong>
- MEU Rule (China, Russia, Venezuela) does not apply to Hong Kong “at this time”

Antiboycott

Impact of UAE leaving the Arab League

- Forwarders must still be on the lookout for Antiboycott language on documents, communications.- primarily on Letters of Credit.
- Certificates that vessels are allowed to call on Arab ports can only be signed by the Master or carrier owner. It is a violation for a forwarder or NVOCC to create/sign this certificate. This is the most common reason that forwarders receive penalties.
- Advising customers against shipping products that were made in Israel is considered participating in the Arab Boycott.
- General statements that say goods cannot be of Israeli origin
- Does UAE withdrawing from Arab League mean that we can lower our guard?
 - U.S. has just announced that UAE remains on the list of countries that support boycotts
 - It may take time for companies in UAE to change practices therefore we should still be on the lookout for boycott language.

Export Manifest

- Trade Act of 2002 required that CBP collect pre-departure data
- Only source for export was the Automated Export System (AES)
- CBP has issued penalties focused on data elements that support their mission (port of export, date of export, carrier and mode of transportation, late filing) as a mechanism to change behavior
- Export Manifest will be the mechanism by which CBP can collect the required pre-departure information from the parties who are actually responsible for that data
- Ocean, Air and Rail manifest are programmed. Truck is more complex and will be addressed last
- Ocean and Rail pilots underway
- Census is engaged in process and evaluating what data they may be able to obtain from the manifest
- Review process includes looking at definitions which will help clarify manifest requirements vs. AES requirements

EEI Filing between US and Puerto Rico / USVI

- EEI filing is required for shipments between US and Puerto Rico / USVI for statistical purposes only
- Census has requested public comments regarding data required, potential sources of data, and the impact of eliminating the EEI filing for these domestic moves
- Comments are due November 16, 2020
<https://www.federalregister.gov/documents/2020/09/17/2020-19986/foreign-trade-regulations-ftr-request-for-public-comments-on-the-overall-impact>
- A few things to think about:
 - Is EEI filing between US and Puerto Rico/USVI a burden?
 - Would there be a measurable benefit to eliminating the requirement?
 - Are there benefits (such as interaction with shippers) that make continuing the current process beneficial?

Routed Export Transaction NPRM

- We should be on the lookout for the new NPRM for Routed Export Transactions (someday).
- Census and BIS working together on companion Notices of Proposed Rulemaking (NPRMs)
- Continues to be delayed as BIS and Census try to work through differences between their respective regulations
- *Welcome to our world!!*

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