

DEPARTMENT OF COMMERCE**Bureau of Export Administration****15 CFR Parts 742 and 744**

[Docket No. 010927238-1238-01]

RIN 0694-AC50

India and Pakistan: Lifting of Sanctions, Removal of Indian and Pakistani Entities, and Revision in License Review Policy**AGENCY:** Bureau of Export Administration, Commerce.**ACTION:** Final rule.

SUMMARY: On September 22, 2001, President George W. Bush waived sanctions placed on India and Pakistan in May 1998, including those sanctions implemented by regulations issued on November 19, 1998 (63 FR 64322). This rule implements the waiver of these sanctions by removing the policy of denial for exports and reexports of items controlled for Nuclear Proliferation (NP) and Missile Technology (MT) reasons to India and Pakistan and restoring the use of License Exceptions for these items for entities not listed on the Entity List. In addition, this rule removes the supplementary measures taken in connection with the sanctions by removing a large number of Indian and Pakistani entities from the Entity List. The license requirements and review policy for the entities that remain on the list are set forth on the list itself.

DATES: This rule is effective October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Eileen M. Albanese, Director, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482-0436.

SUPPLEMENTARY INFORMATION:**Background**

In accordance with section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13, 1998, with regard to India, and on May 30, 1998, with regard to Pakistan, his determinations that those states had each detonated a nuclear explosive device. The President directed that the relevant agencies and instrumentalities of the United States take the necessary actions to implement the sanctions described in section 102(b)(2) of that Act. In light of the President's directive, the Bureau of Export Administration (BXA) adopted certain regulations to implement the sanctions, as well as certain supplementary measures to enhance the sanctions on November 19, 1998 (63 FR 64322).

On September 22, 2001, in Presidential Determination No. 2001-28, and pursuant to section 9001(b) of the Department of Defense Appropriations Act, 2000 (Public Law 106-79), President George W. Bush determined and certified to the Congress that the application to India and Pakistan of the sanctions and prohibitions contained in subparagraphs (B), (C), and (G) of section 102(b)(2) of the Arms Export Control Act would not be in the national security interest of the United States. Furthermore, pursuant to section 9001(a) of the Department of Defense Appropriations Act, 2000 (Public Law 106-79), the President waived, with respect to India and Pakistan, to the extent not already waived, the application of any sanction contained in sections 101 or 102 of the Arms Export Control Act.

Based on this Presidential Determination, this rule implements the lifting of these sanctions by removing section 742.16 of the Export Administration Regulations (EAR), which sets forth the policy of denial for exports and reexports of items controlled for Nuclear Proliferation (NP) and Missile Technology (MT) reasons to India and Pakistan. A license will continue to be required to India and Pakistan for these items, but the license review policy will revert to a case-by-case review, as set forth in sections 742.3 and 742.5 of the EAR for nuclear- and missile-controlled items, respectively. Also, exports of these items to India and Pakistan, other than exports to entities listed on the Entity List, are again eligible for the use of License Exceptions as provided in Part 740 of the EAR.

In light of the President's determination, this rule also removes the supplementary measures, implemented in 1998, by removing sections 744.11, "Restrictions on certain government, parastatal, and private entities in Pakistan and India," and 744.12, "Restrictions on certain military entities in Pakistan and India," from the EAR. This rule also revises the list of Indian and Pakistani entities on the Entity List pursuant to section 744.1(c) of the EAR. License requirements for Indian and Pakistani entities on the Entity List are contained in Supplement No. 4 to Part 744 of the EAR. The license review policy for export and reexports to all Indian and Pakistani listed entities of items classified as EAR99 (items that are subject to the EAR, but are not listed on the Commerce Control List) is presumption of approval, and the license review policy for items listed on

the Commerce Control List is case-by-case.

The removal of entities from the Entity List eliminates the existing license requirements in Supplement No. 4 to Part 744 for exports to those entities. The removal of entities from the Entity List does not relieve exporters or reexporters of their obligations under part 744 of the EAR, which provides that a license is required even when one would not otherwise be necessary, if an exporter knows, has reason to know, or is otherwise informed by BXA that the item will be used in activities related to nuclear, chemical, or biological weapons, or missile delivery systems. BXA strongly urges the use of Supplement No. 3 to part 732 of the EAR, "BXA's 'Know Your Customer' Guidance and Red Flags" when exporting or reexporting to India and Pakistan.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001) continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. This rule contains and involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA-748P; and 0694-0111, "India Pakistan Sanctions," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA-748P. Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as this term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective

date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044 or E-mailed to scook@bxa.doc.gov.

List of Subjects

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 742 and 744 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001; Notice of November 9, 2000, 65 FR 68063, 3 CFR, 2000 Comp., p. 408.

2. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001; Notice of November 9,

2000, 65 FR 68063, 3 CFR, 2000 Comp., p. 408.

PART 742—[AMENDED]

§ 742.16 [Removed]

3. Section 742.16 is removed and reserved.

PART 744—[AMENDED]

§ 744.1 [Amended]

4. Section 744.1 is amended by revising the last sentence in paragraph (c) to read as follows: “No License Exceptions are available for exports or reexports to listed entities of specified items, except License Exceptions for items listed in § 740.2(a)(5) of the EAR destined to listed Indian or Pakistani entities intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft.”

§§ 744.11 and 744.12 [Removed]

5. Sections 744.11 and 744.12 are removed and reserved.

6. Supplement No. 4 to part 744 is amended by removing Appendixes A and B and by revising the country “India” and “Pakistan” entries to read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
India	Bharat Dynamics Limited	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 [Insert FR Cite, 10/01/01]
	The following subordinates of Defense Research and Development Organization (DRDO). Armament Research and Development Establishment (ARDE). Defense Research and Development Lab (DRDL), Hyderabad. Missile Research and Development Complex. Solid State Physics Laboratory.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 [Insert FR Cite, 10/1/01]
	The following Department of Atomic Energy entities. Bhabha Atomic Research Center (BARC). Indira Gandhi Atomic Research Center (IGCAR). Indian Rare Earths Nuclear reactors (including power plants), fuel reprocessing and enrichment facilities, heavy water production facilities and their collocated ammonia plants.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 [Insert FR Cite, 10/1/01]

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Pakistan Atomic Energy Commission (PAEC), and the following subordinate entities. National Development Complex (NDC). Nuclear reactors (including power plants), fuel reprocessing and enrichment facilities, all uranium processing, conversion and enrichment facilities, heavy water production facilities and any collocated ammonia plants. Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 [Insert FR Cite, 10/1/01]
	People's Steel Mills, Karachi	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 [Insert FR Cite, 10/1/01]
	Prime International	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 [Insert FR Cite, 10/1/01]
	Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 [Insert FR Cite, 10/1/01]
	Technical Services, Islamabad ..	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 [Insert FR Cite, 10/1/01]
	The Tempest Trading Company, Islamabad.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 [Insert FR Cite, 10/1/01]
	Unique Technical Promoters	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 [Insert FR Cite, 10/1/01]
	Wah Chemical Product Plant	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 [Insert FR Cite, 10/1/01]
	Wah Munitions Plant, a.k.a. Explosives Factory, Pakistan Ordnance Factories (POF).	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98 65 FR 14444, 03/17/00 [Insert FR Cite, 10/1/01]
*	*	*	*	*

Dated: September 27, 2001.

James J. Jochum,*Assistant Secretary for Export Administration.*

[FR Doc. 01-24648 Filed 9-28-01; 8:45 am]

BILLING CODE 3510-33-P