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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 742, and 758

[Docket No. 130405339-3339-01]

RIN 0694-AF72

U.S.-India Bilateral Understanding: Additional Revisions to the U. S. Export and Reexport Controls Under the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to further implement the bilateral understanding between the United States and India announced by President Obama and India's Prime Minister Singh on November 8, 2010. On January 25, 2011, BIS published the first rule in a series of rules to implement the bilateral understanding between the two countries. These rules fulfill the President's and Prime Minister's commitment to work together to strengthen the global nonproliferation and export control framework and further transform our bilateral export control cooperation to realize the full potential of the strategic partnership between the two countries. Specifically, in this rule, to further implement the November 8, 2010 bilateral understanding, BIS removes license requirements for certain items controlled for crime control and regional stability reasons to India. BIS also makes conforming changes in this rule.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

Chantal Lakatos, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce, by telephone: (202) 482-1739; or by email:

Chantal.Lakatos@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

U.S.-India Bilateral Understanding: Additional Revisions to the U. S. Export and Reexport Controls Under the Export Administration Regulations

On January 25, 2011, the Bureau of Industry and Security (BIS) published a final rule, the first in a series of rules, which amended the Export Administration Regulations (EAR) to implement the U.S.-India bilateral understanding (76 FR 4228, January 25, 2011) (January 25 rule). The January 25 rule and the bilateral understanding were the result of the November 8, 2010 Joint Statement issued by President Obama and Prime Minister Singh of India announcing that they had resolved to expand and strengthen the U.S.-India global strategic partnership. (U.S.-India Joint Statement, November 8, 2010). The Joint Statement covered a range of issues, activities, and programs that reflect the vision of the President and of India's Prime Minister. In the Joint Statement, the leaders reaffirmed that the U.S.-India strategic partnership is indispensable for global stability and prosperity and reaffirmed existing assurances regarding procurement and use by India of items subject to the EAR. In the Joint Statement, recognizing that India and the United States should play a leadership role in promoting global nonproliferation objectives and their desire to expand high technology cooperation and trade, the two leaders committed to work together to strengthen the global export control framework and

further transform bilateral export control regulations and policies. The two nations decided to take mutual steps to expand U.S.-India cooperation in civil space, defense and other high technology sectors.

The United States' implementation of the commitment included removing Indian defense and space related entities from the Entity List, as well as realigning India in U.S. export control regulations. Additionally, the Joint Statement announced that the United States "intends to support India's full membership in the four multilateral export control regimes (Nuclear Suppliers Group, Missile Technology Control Regime, Australia Group, and Wassenaar Arrangement) in a phased manner, and to consult with regime members to encourage the evolution of regime membership criteria...consistent with maintaining the core principles of these regimes, as the Government of India takes steps towards the full adoption of the regimes' export control requirements to reflect its prospective membership, with both processes moving forward together." The January 25 rule began the implementation of those reforms by revising certain export and reexport controls for India, including the removal of nine Indian entities from the Entity List. In addition, in the January 25 rule, BIS amended the EAR to remove India from Country Groups D:2, D:3, and D:4, and to add India to Country Group A:2 in Supplement No. 1 to Part 740. BIS also made conforming changes in the EAR.

In this rule, BIS amends the EAR to further implement the November 8, 2010 bilateral understanding between the United States and India. Specifically, this rule removes India from Crime Controls (CC) columns 1 and 3, and Regional Stability (RS) column 2 on the Commerce Country Chart in Supplement No. 1 to Part 738 of the EAR because the Government of India has now taken appropriate steps to ensure that the specific U.S.-origin items controlled for CC and RS reasons are not reexported from India without a license. However, a license requirement

remains for items controlled under export control classification numbers (ECCNs) 6A003.b.4.b and 9A515.e for RS column 2 reasons when destined to India. BIS also makes conforming changes in this rule. These changes, like those in the January 25 rule, are in the national interest of the United States.

Specific Additional Amendments to the EAR Further Implementing the U.S.-India Bilateral Understanding

Part 738 – Commerce Control List Overview and the Country Chart

BIS amends the EAR to remove the “X” in CC columns 1 and 3 and in RS column 2 for “India” in Supplement No. 1 to Part 738 of the EAR (Commerce Country Chart). These actions remove the license requirement for India for U.S. – origin items controlled under the EAR for CC columns 1 and 3 reasons and for RS column 2 reasons. BIS notes that the elimination of license requirements for RS column 2 items to India does not eliminate license requirements for items classified under ECCNs 6A003.b.4.b and 9A515.e.

Part 758 – Export Clearance Requirements

In addition, BIS amends the EAR to establish a filing requirement in the Automated Export System (AES) for items exported to India when those items fall under an ECCN on the Commerce Control List in Supplement No. 1 to Part 774, for which CC columns 1 and 3, and RS column 2 are listed as reasons for control. Specifically, BIS amends section 758.1 of the EAR by adding new paragraph (b)(9) that requires exporters file an AES record for items controlled for CC 1 and 3 and RS 2 reasons when such items are for export to India, regardless of value.

BIS amends section 758.6 by adding new paragraph (c) requiring a notation on the invoice, bill of lading, air waybill, or other export control document that accompanies the shipment from

its point of origin in the United States to the ultimate consignee or end-user in India. The notation will indicate the ECCNs of items for which CC columns 1 or 3, or RS column 2 reasons for control are listed, that they are destined to India, and that authorization may be required from the U.S. Department of Commerce for reexport of the items.

Conforming Amendments

Section 740.2 (Restrictions on All License Exceptions) and Supplement 1 to Part 738 (Commerce

Country Chart)

As a conforming change to removing the license requirement for India for items controlled for CC columns 1 and 3 reasons, BIS also amends section 740.2 of the EAR to add India to paragraph (a)(4)(i). Inclusion in paragraph (a)(4)(i) identifies India as one of the countries or organizations (i.e., Australia, Japan, New Zealand, or a NATO (North Atlantic Treaty Organization) member state) for which the restrictions on license exceptions due to license requirements described in section 742.7 (crime control and detection) do not apply. This status for India also broadens the availability of license exceptions under the EAR for items exported to India.

BIS also amends the EAR to make a conforming change by adding a seventh footnote to Supplement No. 1 to Part 738 to notify exporters of an AES filing requirement for CC columns 1 and 3 items, and RS column 2 items when they are intended for export to India. That footnote also notifies exporters that the elimination of license requirements for items controlled for RS column 2 reasons to India does not apply to items controlled under ECCNs 6A003.b.4.b and 9A515.e.

Section 742.6 (Regional Stability)

Finally, BIS makes conforming changes in paragraph (a)(4)(i) of section 742.6 to add India to the list of countries for which a license is not required for items controlled for RS column 2 reasons for control, while also pointing out that a license requirement remains for items controlled under ECCNs 6A003.b.4.b and 9A515.e for RS column 2 reasons when destined to India.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

On January 20, 2015, the Under Secretary of Commerce for Industry and Security, pursuant to the authority delegated to him under section 6(n)(2) of the Export Administration Act, designated India as an eligible destination for export and reexport of items controlled for crime control (CC) without a license.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provisions of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the PRA. This collection has been approved by OMB under control numbers 0694-0088, “Simplified Network Application Processing System,” which includes among other things license applications and carries a burden hour estimate of 43.8 minutes for a manual or electronic application; and 0694-0122, “Licensing Responsibilities and Enforcement,” which carries a burden hour estimate of 5 seconds to manually or electronically complete each required export clearance document. Total burden hours associated

with the PRA and OMB control numbers 0694-0088 and 0694-0122 are not expected to increase as a result of this rule.

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

4. Pursuant to 5 U.S.C. 553(a)(1), the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). This rule further implements the phased aspects of the understanding between the United States and India reflected in the November 8, 2010 U.S.-India Joint Statement and is not discretionary. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 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. Accordingly, no Regulatory Flexibility analysis is required and none has been prepared. Notwithstanding these considerations, BIS welcomes public comments and will review them on a continuing basis.

List of Subjects

15 CFR Part 738

Exports.

15 CFR Parts 740 and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

Accordingly, parts 738, 740, 742, and 758 of the EAR (15 CFR parts 730 – 774) are amended as follows:

PART 738 -- [AMENDED]

1. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

2. Amend Supplement No. 1 to part 738 by:
 - a. Removing “X” in columns “RS 2” and “CC 1 and 3” for “India”; and
 - b. Adding footnote designation 7 to “India”; and
 - c. Adding footnote 7.

The addition reads as follows:

Supplement No. 1 to Part 738—Commerce Country Chart

* * * * *

⁷ See § 758.1(b)(9) for an AES filing requirement for exports of CC column 1 or 3, or RS column 2 items to India. Also note that a license is still required for items controlled under ECCNs 6A003.b.4.b and 9A515.e for RS column 2 reasons when destined to India.

PART 740 – [AMENDED]

3. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

4. Amend § 740.2 by revising paragraph (a)(4)(i) to read as follows:

§ 740.2 Restrictions on all License Exceptions

(a)***

(4) * * *

(i) Being made to Australia, India, Japan, New Zealand, or a NATO (North Atlantic Treaty Organization) member state (see NATO membership listing in § 772.1 of the EAR):

* * * * *

PART 742 – [AMENDED]

5. The authority citation for part 742 continues 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; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; 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, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014).

6. Amend § 742.6 by revising paragraph (a)(4)(i) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(4) * * *

(i) *License requirements applicable to most RS Column 2 items.* As indicated in the CCL and in RS Column 2 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except Australia, India, Japan, New Zealand, and countries in the North Atlantic Treaty Organization (NATO) for all items in

ECCNs on the CCL that include RS Column 2 in the Country Chart column of the ‘‘License Requirements’’ section. A license continues to be required for items controlled under ECCNs 6A003.b.4.b and 9A515.e for RS Column 2 reasons when destined to India.

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PART 758 – [AMENDED]

7. The authority citation for part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

8. Amend § 758.1 by adding paragraph (b)(9) to read as follows:

§ 758.1 The Electronic Export Information (EEI) filing to the Automated Export System (AES).

* * * * *

(b)* * *

(9) For items that fall under ECCNs that list CC Column 1 and 3 and RS Column 2 (see Supplement No. 1 to part 738 of the EAR) as reasons for control and such items are for export, regardless of value, to India.

* * * * *

9. Amend § 758.6 by adding paragraph (c) to read as follows:

§ 758.6 Destination control statements and other information furnished to consignees.

* * * * *

(c) Additional requirement for items under ECCNs for which CC Column 1 or 3 or RS Column 2 are listed as reasons for control and are destined

to India. In addition to the DCS as required in paragraph (a) of this section, the following information must be printed on the invoice, bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user in India: “These items are classified under Export Control Classification Number(s) (ECCN(s)) [Fill-in the ECCNs for which CC 1 or 3 or RS 2 are listed as reasons for control] and destined to India. Authorization for reexport from India may be required from the U.S. Department of Commerce.”

Dated: January 20, 2015.

Eric L. Hirschhorn,

Under Secretary for Industry and Security.

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