Section 2354, act July 10, 1952, ch. 630, title VII, § 705, 66 Stat. 539, related to limitations on combat payments.

Section 2355, act July 10, 1952, ch. 630, title VII, § 706, 66 Stat. 539, related to regulations for the administration of sections 2351 to 2356 of this Appendix.

Section 2356, act July 10, 1952, ch. 630, title VII, § 707, 66 Stat. 539, related to determinations of fact, conclusiveness of findings, and availability of appropriations.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as an Effective Date of 1963 Amendment note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

WORLD WAR II LICENSE AGREEMENTS

ACT AUG. 16, 1950, CH. 716, 64 STAT. 448

Sec.
2371. Modification or cancellation of certain license agreements granted Government during World War II.

§ 2371. Modification or cancellation of certain license agreements granted Government during World War II

Notwithstanding any other provision of law, the head of any department or other agency in the executive branch of the Government which subsequent to September 9, 1939, entered into any contract or agreement with the holder of any privately owned patent or any right thereunder whereby such holder granted to the United States, without payment of royalty or with reduction or limitation of royalty, any license under such patent or right, is authorized, upon application of the grantor of such license, to enter into such supplemental contract or agreement for the cancellation of the contract or agreement by which such license was granted as the head of such department or agency shall deem to be warranted by equities existing by reason of changes in circumstances occurring since the granting of such license.

(Aug. 16, 1950, ch. 716, 64 Stat. 448.)

CODIFICATION

Section was formerly classified to section 119 of former Title 35, Patents, prior to the general revision and enactment of Title 35, Patents, by act July 19, 1952, ch. 950, § 1, 66 Stat. 792.

EMERGENCY SHIP REPAIR PROGRAM

ACT AUG. 20, 1954, CH. 777, 68 STAT. 754

§§ 2391 to 2394. Repealed. Pub. L. 101–225, title III, § 307(16), Dec. 12, 1989, 103 Stat. 1925

Section 2391, act Aug. 20, 1954, ch. 777, § 2, 68 Stat. 754, set out purpose of Act as providing for the immediate improvement of merchant vessels in reserve fleet under jurisdiction of Secretary of Commerce, thereby stimulating shipbuilding and ship repair industries of Nation.

Section 2392, act Aug. 20, 1954, ch. 777, § 3, 68 Stat. 754, directed Secretary of Commerce, after consultation with Secretary of Defense, to formulate and carry out a modernization program for merchant vessels in national defense reserve under jurisdiction of Secretary of Commerce.

Section 2393, acts Aug. 20, 1954, ch. 777, § 4, 68 Stat. 754; Aug. 6, 1956, ch. 1012, 70 Stat. 1067, directed Secretary of Commerce to contract before July 1, 1958, for repair and modernization of vessels after inviting single bids or split bids or both and specified that expenditures not exceed $25,000,000, that contracts be with private shipbuilding or ship repair yards in the United States, and that contracts conform to the Federal Property and Administrative Services Act of 1949 (see chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of Title 41, Public Contracts).

Section 2394, act Aug. 20, 1954, ch. 777, § 5, 68 Stat. 755, authorized appropriations not in excess of $25,000,000 to carry out this Act.

EXPORT REGULATION

PUB. L. 96–72, SEPT. 29, 1979, 93 STAT. 503

Sec.
2401. Congressional findings.
2402. Congressional declaration of policy.
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2404. National security controls.
2405. Foreign policy controls.
2406. Short supply controls.
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2408. Procedures for hardship relief from export controls.
2409. Procedures for processing export license applications; other inquiries.
2410. Violations.
2410a. Multilateral export control violations.
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2411. Enforcement.
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2412. Administrative procedure and judicial review.
2413. Annual report.
2414. Administrative and regulatory authority.
2415. Definitions.
2416. Effect on other Acts.
2417. Authorization of appropriations.
2418. Effective date.
2419. Termination date.
2420. Savings provisions.

§ 2401. Congressional findings

The Congress makes the following findings:

(1) The ability of United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by earning foreign exchange, thereby contributing favorably to the trade balance. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, consistent with the economic, security, and foreign policy objectives of the United States.

(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon

fulfillment of the foreign policy of the United States.

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

(6) Uncertainty of export control policy can inhibit the efforts of United States business and work to the detriment of the overall attempt to improve the trade balance of the United States.

(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to a positive contribution to the balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

(10) It is important that the administration of export controls imposed for foreign policy purposes give special emphasis to the need to control exports of goods and substances hazardous to the public health and the environment which are banned or severely restricted for use in the United States, and which, if exported, could affect the international reputation of the United States as a responsible trading partner.

(11) Availability to controlled countries of goods and technology from foreign sources is a fundamental concern of the United States and should be eliminated through negotiations and other appropriate means whenever possible.

(12) Excessive dependence of the United States, its allies, or countries sharing common strategic objectives with the United States, on energy and other critical resources from potential adversaries can be harmful to the mutual and individual security of all those countries.

(Pub. L. 96–72, §2, Sept. 29, 1979, 93 Stat. 503; Pub. L. 99–64, title I, §102, July 12, 1985, 99 Stat. 120; Pub. L. 103–199, title II, §201(a), Dec. 17, 1993, 107 Stat. 2320.)

PRIOR PROVISIONS

A prior section 2401, Pub. L. 91–184, §2, Dec. 30, 1969, 83 Stat. 841; Pub. L. 92–412, title I, §102, Aug. 29, 1972, 86 Stat. 644; Pub. L. 93–500, §4(a), Oct. 29, 1974, 88 Stat. 1553, setting forth findings of Congress with respect to the Export Administration Act of 1969, expired on Sept. 30, 1979.

AMENDMENTS

1993—Pars. (11) to (13). Pub. L. 103–199 redesignated pars. (12) and (13) as (11) and (12), respectively, and struck out former par. (11) which read as follows: ''The acquisition of national security sensitive goods and technology by the Soviet Union and other countries the actions or policies of which run counter to the national security interests of the United States, has led to the significant enhancement of Soviet bloc military-industrial capabilities. This enhancement poses a threat to the security of the United States, its allies, and other friendly nations, and places additional demands on the defense budget of the United States.''

1985—Par. (2). Pub. L. 99–64, §102(1), substituted ''by earning foreign exchange, thereby contributing favorably to the trade balance'' for ''by strengthening the trade balance and the value of the United States dollar, thereby reducing inflation''.

Par. (3). Pub. L. 99–64, §102(2), substituted ''consistent with the economic, security, and foreign policy objectives of the United States'' for ''which would strengthen the Nation's economy''.

Par. (6). Pub. L. 99–64, §102(3), amended par. (6) generally, substituting ''inhibit the efforts of United States business and work'' for ''curtail the efforts of American business''.

Par. (9). Pub. L. 99–64, §102(4), substituted ''a positive contribution to the balance of payments'' for ''achievement of a positive balance of payments''.

Pars. (10) to (13). Pub. L. 99–64, §102(5), added pars. (10) to (13).

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–418, title II, §2441, Aug. 23, 1988, 102 Stat. 1364, provided that: ''This part [part II (§§2441–2447) of subtitle D of title II of Pub. L. 100–418, enacting section 2410a of this Appendix, amending sections 2404 and 2413 of this Appendix and section 1864 of Title 19, Customs Duties, and enacting provisions set out as notes under section 2410a of this Appendix] may be cited as the 'Multilateral Export Control Enhancement Amendments Act'.''

SHORT TITLE OF 1985 AMENDMENT

Section 1 of Pub. L. 99–64 provided that: ''Titles I and II of this Act [enacting sections 4051 to 4053 of Title 15, Commerce and Trade, section 1864 of Title 19, Customs Duties, and section 466c of Title 46, Appendix, Shipping, amending this section and sections 2402, 2403, 2404 to 2406, 2409 to 2411, 2412 to 2417, and 2419 of this Appendix, sections 5314 and 5315 of Title 5, Government Organization and Employees, sections 2304 and 2778 of Title 22, Foreign Relations and Intercourse, and section 185 of Title 30, Mineral Lands and Mining, and enacting provisions set out as notes under sections 2404, 2405, and 2414 of this Appendix and section 5314 of Title 5] may be cited as the 'Export Administration Amendments Act of 1985'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–145, §1, Dec. 29, 1981, 95 Stat. 1727, provided: ''That this Act [amending sections 2405, 2410, 2411, and 2417 of this Appendix and enacting provisions set out as notes under sections 2405, 2410, and 2417 of this Appendix] may be cited as the 'Export Administration Amendments Act of 1981'.''

SHORT TITLE

Section 1 of Pub. L. 96–72 provided that: ''This Act [enacting this section and sections 2402 to 2420 of this Appendix, amending section 1732 of Title 7, Agriculture, sections 2778 and 3108 of Title 22, Foreign Relations and Intercourse, section 993 of Title 26, Internal Revenue Code, and sections 6212 and 6274 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 2406 and 2409 of this Appendix and

section 3108 of Title 22] may be cited as the 'Export Administration Act of 1979'.''

DIRECTOR OF NATIONAL INTELLIGENCE SUPPORT FOR REVIEWS OF INTERNATIONAL TRAFFIC IN ARMS REGULATIONS AND EXPORT ADMINISTRATION REGULATIONS

Pub. L. 111–259, title IV, § 415, Oct. 7, 2010, 124 Stat. 2727, provided that: ''The Director of National Intelligence may provide support for any review conducted by a department or agency of the United States Government of the International Traffic in Arms Regulations or Export Administration Regulations, including a review of technologies and goods on the United States Munitions List and Commerce Control List that may warrant controls that are different or additional to the controls such technologies and goods are subject to at the time of such review.''

EXECUTIVE ORDER NO. 11753

Ex. Ord. No. 11753, Dec. 20, 1973, 38 F.R. 34983, which established the President's Export Council, was revoked by section 1–402 of Ex. Ord. No. 12131, May 4, 1979, 44 F.R. 26842, set out below.

EX. ORD. NO. 12131. PRESIDENT'S EXPORT COUNCIL

Ex. Ord. No. 12131, May 4, 1979, 44 F.R. 26841, as amended by Ex. Ord. No. 12551, Feb. 21, 1986, 21 F.R. 6509; Ex. Ord. No. 12991, Mar. 6, 1996, 61 F.R. 9587; Ex. Ord. No. 13138, § 5, Sept. 30, 1999, 64 F.R. 53880; Ex. Ord. No. 13316, § 5, Sept. 17, 2003, 68 F.R. 55256; Ex. Ord. No. 13596, § 1, Dec. 19, 2011, 76 F.R. 80725, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to expand the membership of the President's Export Council, in accord with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), it is hereby ordered as follows:

1–1. ESTABLISHMENT AND MEMBERSHIP

1–101. There is established the President's Export Council.

1–102. The membership of the Council shall be as follows:

(a) The heads of the following executive departments, agencies, or offices, or their representatives:

(1) Department of State.
(2) Department of the Treasury.
(3) Department of Agriculture.
(4) Department of Commerce.
(5) Department of Labor.
(6) Department of Energy.
(7) Department of Transportation.
(8) Department of Homeland Security.
(9) Office of United States Trade Representative.
(10) Export-Import Bank of the United States.
(11) Small Business Administration.
(12) United States Trade and Development Agency.
(13) Overseas Private Investment Corporation.
(14) Council of Economic Advisers.
(15) Office of Management and Budget.
(16) National Economic Council.
(17) National Security Staff.

(b) In their discretion, the heads of the following organizations or their designees:

(1) National Governors Association.
(2) United States Conference of Mayors.

(c) Five members of the United States Senate, designated by the President of the Senate, and five members of the United States House of Representatives, designated by the Speaker of the House, to serve for a two-year term.

(d) Not to exceed 28 citizens appointed by the President. These individuals shall be selected from those who are not full-time Federal officers or employees. They shall include representatives of business and industry, agriculture, and labor.

1–103. The President shall designate a Chairman and a Vice Chairman from among the members appointed by the President.

1–104. The Secretary of Commerce, with the concurrence of the Chairman, shall appoint an Executive Director.

1–2. FUNCTIONS

1–201. The Council shall serve as a national advisory body on matters relating to United States export trade, including advice on the implementation of the President's National Export Policy, which was announced on September 26, 1978. It shall, through the Secretary of Commerce, report to the President on its activities and on its recommendations for expanding United States exports.

1–202. The Council should survey and evaluate the export expansion activities of the communities represented by the membership. It should identify and examine specific problems which business, industrial, and agricultural practices may cause for export trade, and examine the needs of business, industry, and agriculture to expand their efforts. The Council should recommend specific solutions to these problems and needs.

1–203. The Council may act as liaison among the communities represented by the membership; and, may provide a forum for those communities on current and emerging problems and issues in the field of export expansion. The Council should encourage the business, industrial, and agricultural communities to enter new foreign markets and to expand existing export programs.

1–204. The Council shall provide advice on Federal plans and actions that affect export expansion policies which have an impact on those communities represented by the membership.

1–205. The Council may establish, with the concurrence of the Secretary of Commerce, an executive committee and such other subordinate committees it considers necessary for the performance of its functions. The Chairman of a subordinate committee shall be designated, with the concurrence of the Secretary of Commerce, by the Chairman of the Council from among the membership of the Council. Members of subordinate committees shall be appointed by the Secretary of Commerce.

1–3. ADMINISTRATIVE PROVISIONS

1–301. The Secretary of Commerce shall, to the extent permitted by law, provide the Council, including its executive and subordinate committees, with administrative and staff services, support and facilities as may be necessary for the effective performance of its functions.

1–302. Each member of the Council, including its executive and subordinate committees, who is not otherwise paid a salary by the Federal Government, shall receive no compensation from the United States by virtue of their service on the Council, but all members may receive the transportation and travel expenses, including per diem in lieu of subsistence, authorized by law (5 U.S.C. 5702 and 5703).

1–4. GENERAL PROVISIONS

1–401. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.), except that of reporting annually to the Congress, which are applicable to the Council, shall be performed by the Secretary of Commerce in accordance with guidelines and procedures established by the Administrator of General Services.

1–402. Executive Order No. 11753 is revoked; however, nothing in this Order shall be deemed to require new charters for the Council, including its executive and subordinate committees, which were current immediately prior to the issuance of this Order.

1–403. The Council shall terminate on December 31, 1980, unless sooner extended.

EXTENSION OF TERM OF PRESIDENT'S EXPORT COUNCIL

Term of the President's Export Council extended until Dec. 31, 1982, by section 1–101(*l*) of Ex. Ord. No.

12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Export Council extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 1993, by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 1999, by Ex. Ord. No. 13062, §1(m), Sept. 29, 1997, 62 F.R. 51755, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 2009, by Ex. Ord. No. 13446, Sept. 28, 2007, 72 F.R. 56175, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 2011, by Ex. Ord. No. 13511, Sept. 29, 2009, 74 F.R. 50909, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Export Council extended until Sept. 30, 2013, by Ex. Ord. No. 13585, Sept. 30, 2011, 76 F.R. 62281, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

EX. ORD. NO. 13558. EXPORT ENFORCEMENT COORDINATION CENTER

Ex. Ord. No. 13558, Nov. 9, 2010, 75 F.R. 69573, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to advance United States foreign policy and protect the national and economic security of the United States through strengthened and coordinated enforcement of United States export control laws and enhanced intelligence exchange in support of such enforcement efforts, it is hereby ordered as follows:

SECTION 1. *Policy*. Export controls are critical to achieving our national security and foreign policy goals. To enhance our enforcement efforts and minimize enforcement conflicts, executive departments and agencies must coordinate their efforts to detect, prevent, disrupt, investigate, and prosecute violations of U.S. export control laws, and must share intelligence and law enforcement information related to these efforts to the maximum extent possible, consistent with national security and applicable law.

SEC. 2. *Establishment*. (a) The Secretary of Homeland Security shall establish, within the Department of Homeland Security for administrative purposes, an interagency Federal Export Enforcement Coordination Center (Center).

(b) The Center shall coordinate on matters relating to export enforcement among the following:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of Commerce;

(vi) the Department of Energy;

(vii) the Department of Homeland Security;

(viii) the Office of the Director of National Intelligence; and

(ix) other executive branch departments, agencies, or offices as the President, from time to time, may designate.

(c) The Center shall have a Director, who shall be a full-time senior officer or employee of the Department of Homeland Security, designated by the Secretary of Homeland Security. The Center shall have two Deputy Directors, who shall be full-time senior officers or employees of the Department of Commerce and the Department of Justice, designated by the Secretary of Commerce and the Attorney General, respectively, detailed to the Center and reporting to the Director. The Center shall also have an Intelligence Community Liaison, who shall be a full-time senior officer or employee of the Federal Government, designated by the Director of National Intelligence, and detailed or assigned to the Center.

(d) The Center shall have a full-time staff reporting to the Director. To the extent permitted by law, executive departments and agencies enumerated in subsection (b) of this section are encouraged to detail or assign their employees to the Center without reimbursement.

SEC. 3. *Functions*. The Center shall:

(a) serve as the primary forum within the Federal Government for executive departments and agencies to coordinate and enhance their export control enforcement efforts and identify and resolve conflicts that have not been otherwise resolved in criminal and administrative investigations and actions involving violations of U.S. export control laws;

(b) serve as a conduit between Federal law enforcement agencies and the U.S. Intelligence Community for the exchange of information related to potential U.S. export control violations;

(c) serve as a primary point of contact between enforcement authorities and agencies engaged in export licensing;

(d) coordinate law enforcement public outreach activities related to U.S. export controls; and

(e) establish Government-wide statistical tracking capabilities for U.S. criminal and administrative export control enforcement activities, to be conducted by the Department of Homeland Security with information provided by and shared with all relevant departments and agencies participating in the Center.

SEC. 4. *Administration.* (a) The Department of Homeland Security shall operate and provide funding and administrative support for the Center to the extent permitted by law and subject to the availability of appropriations.

(b) The Director of the Center shall convene and preside at the Center's meetings, determine its agenda, direct the work of the Center, and, as appropriate to particular subject matters, organize and coordinate subgroups of the Center's members.

SEC. 5. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law, regulation, Executive Order, or Presidential Directive to an executive department, agency, or head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) Nothing in this order shall be construed to provide exclusive or primary investigative authority to any agency. Agencies shall continue to investigate criminal and administrative export violations consistent with their existing authorities, jointly or separately, with coordination through the Center to enhance enforcement efforts and minimize potential for conflict.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

§ 2402. Congressional declaration of policy

The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments or common strategic objectives.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States—

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make reasonable and prompt efforts to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before imposing export controls. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before imposing export controls.

(9) It is the policy of the United States to cooperate with other countries with which the

United States has defense treaty commitments or common strategic objectives in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments or common strategic objectives, and to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States.

(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

(12) It is the policy of the United States to sustain vigorous scientific enterprise. To do so involves sustaining the ability of scientists and other scholars freely to communicate research findings, in accordance with applicable provisions of law, by means of publication, teaching, conferences, and other forms of scholarly exchange.

(13) It is the policy of the United States to control the export of goods and substances banned or severely restricted for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.

(14) It is the policy of the United States to cooperate with countries which are allies of the United States and countries which share common strategic objectives with the United States in minimizing dependence on imports of energy and other critical resources from potential adversaries and in developing alternative supplies of such resources in order to minimize strategic threats posed by excessive hard currency earnings derived from such resource exports by countries with policies adverse to the security interests of the United States.

(Pub. L. 96–72, §3, Sept. 29, 1979, 93 Stat. 504; Pub. L. 99–64, title I, §103, July 12, 1985, 99 Stat. 121; Pub. L. 103–199, title II, §201(b)(2), Dec. 17, 1993, 107 Stat. 2321.)

PRIOR PROVISIONS

A prior section 2402, Pub. L. 91–184, §3, Dec. 30, 1969, 83 Stat. 841; Pub. L. 92–412, title I, §103, Aug. 29, 1972, 86 Stat. 644; Pub. L. 93–500, §§2, 4(b), (c), 11, Oct. 29, 1974, 88 Stat. 1552, 1553, 1556; Pub. L. 95–52, title I, §115, title II, §202, June 22, 1977, 91 Stat. 241, 247, setting forth declaration of policy of Congress with respect to the Export Administration Act of 1969, expired on Sept. 30, 1979.

AMENDMENTS

1993—Par. (15). Pub. L. 103–199 struck out par. (15) which read as follows: ''It is the policy of the United States, particularly in light of the Soviet massacre of innocent men, women, and children aboard Korean Air Lines flight 7, to continue to object to exceptions to the International Control List for the Union of Soviet Socialist Republics, subject to periodic review by the President.''

1985—Par. (3). Pub. L. 99–64, §103(1), inserted ''or common strategic objectives'' after ''defense treaty commitments''.

Par. (7). Pub. L. 99–64, §103(2), substituted ''the President shall make reasonable and prompt efforts'' for ''the President shall make every reasonable effort'', and ''imposing export controls'' for ''resorting to the imposition of controls on exports from the United States''.

Par. (8). Pub. L. 99–64, §103(3), substituted ''the President shall make reasonable and prompt efforts'' for ''the President shall make every reasonable effort'', and ''imposing export controls'' for ''resorting to the imposition of export controls''.

Par. (9). Pub. L. 99–64, §103(4), inserted ''or common strategic objectives'' after ''commitments'' in two places, and inserted '', and to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States''.

Pars. (12) to (15). Pub. L. 99–64, §103(5), added pars. (12) to (15).

DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix.

POLICY REGARDING KAL

Section 201(b)(1) of Pub. L. 103–199 provided that: ''The Congress finds that—

''(A) President Yeltsin should be commended for meeting personally with representatives of the families of the victims of the shootdown of Korean Airlines (KAL) Flight 7;

''(B) President Yeltsin's Government has met on two separate occasions with United States Government and family members to answer questions associated with the shootdown and has arranged for the families to interview Russians involved in the incident or the search and rescue operations that followed;

''(C) President Yeltsin's Government has also cooperated fully with the International Civil Aviation Organization (ICAO) to allow it to complete its investigation of the incident and has provided numerous materials requested by the ICAO, including radar data and so-called 'black boxes', the digital flight data and cockpit voice recorders from the flight;

''(D) the Export Administration Act of 1979 [sections 2401 to 2420 of this Appendix] continues to state that the United States should continue to object to exceptions to the International Control List for the Union of Soviet Socialist Republics in light of the KAL tragedy, even though the 'no exceptions' policy was rescinded by President Bush in 1990;

''(E) the Government of the United States is seeking compensation from the Russian Government on behalf of the families of the KAL victims, and the Congress expects the Administration to continue to pursue issues related to the shootdown, including that of compensation, with officials at the highest level of the Russian Government; and

''(F) in view of the cooperation provided by President Yeltsin and his government regarding the KAL incident and these other developments, it is appropriate to remove such language from the Export Administration Act of 1979.''

POLICY ON MISSILE TECHNOLOGY CONTROL

Pub. L. 101–510, div. A, title XVII, §1701, Nov. 5, 1990, 104 Stat. 1738, provided that: ''It should be the policy of the United States to take all appropriate measures—

''(1) to discourage the proliferation, development, and production of the weapons, material, and technology necessary to produce or acquire missiles that can deliver weapons of mass destruction;

''(2) to discourage countries and private persons in other countries from aiding and abetting any states from acquiring such weapons, material, and technology;

''(3) to strengthen United States and existing multilateral export controls to prohibit the flow of materials, equipment, and technology that would assist countries in acquiring the ability to produce or acquire missiles that can deliver weapons of mass destruction, including missiles, warheads and weaponization technology, targeting technology, test and evaluation technology, and range and weapons effect measurement technology; and

''(4) with respect to the Missile Technology Control Regime ('MTCR') and its participating governments—

''(A) to improve enforcement and seek a common and stricter interpretation among MTCR members of MTCR principles;

''(B) to increase the number of countries that adhere to the MTCR; and

''(C) to increase information sharing among United States agencies and among governments on missile technology transfer, including export licensing, and enforcement activities.''

§ 2403. General provisions

(a) Types of licenses

Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act [sections 2401 to 2420 of this Appendix], the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including, but not limited to, the following:

(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries, except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China. The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall have the responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant and periodic reviews of licensees and their compliance with the terms of licenses issued under this Act [sections 2401 to 2420 of this Appendix]. Factors such as the applicant's products or volume of business, or the consignees' geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

(B) A comprehensive operations license, authorizing exports and reexports of technology and related goods, including items from the list of militarily critical technologies developed pursuant to section 5(d) of this Act [section 2404(d) of this Appendix] which are included on the control list in accordance with that section, from a domestic concern to and among its foreign subsidiaries, affiliates, joint venturers, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled countries (except the People's Republic of China), and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act [section 2411(a) of this Appendix] and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

(C) A project license, authorizing exports of goods or technology for a specified activity.

(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act [sections 2401 to 2420 of this Appendix].

(b) Control list

The Secretary shall establish and maintain a list (hereinafter in this Act [sections 2401 to 2420 of this Appendix] referred to as the ''control list'') stating license requirements (other than for general licenses) for exports of goods and technology under this Act [sections 2401 to 2420 of this Appendix].

(c) Foreign availability

In accordance with the provisions of this Act [sections 2401 to 2420 of this Appendix], the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in sufficient quantities and comparable in quality to those produced in the United States so as to render the controls ineffective in achieving their purposes, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. In complying with the provisions of this subsection, the President shall

give strong emphasis to bilateral or multilateral negotiations to eliminate foreign availability. The Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

(d) Right of export

No authority or permission to export may be required under this Act [sections 2401 to 2420 of this Appendix], or under regulations issued under this Act [sections 2401 to 2420 of this Appendix], except to carry out the policies set forth in section 3 of this Act [section 2402 of this Appendix].

(e) Delegation of authority

The President may delegate the power, authority, and discretion conferred upon him by this Act [sections 2401 to 2420 of this Appendix] to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act [sections 2401 to 2420 of this Appendix] may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act [sections 2401 to 2420 of this Appendix].

(f) Notification of public; consultation with business

The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act [sections 2401 to 2420 of this Appendix] with a view to encouraging trade. The Secretary shall meet regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of goods and technology.

(g) Fees

No fee may be charged in connection with the submission or processing of an export license application.

(Pub. L. 96–72, §4, Sept. 29, 1979, 93 Stat. 505; Pub. L. 99–64, title I, §104, July 12, 1985, 99 Stat. 122; Pub. L. 100–418, title II, §§2411, 2412, Aug. 23, 1988, 102 Stat. 1347.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, known as the Export Administration Act of 1979, which enacted sections 2401 to 2420 of this Appendix, amended section 1732 of Title 7, Agriculture, sections 2778 and 3108 of Title 22, Foreign Relations and Intercourse, section 993 of Title 26, Internal Revenue Code, and sections 6212 and 6274 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 2401, 2406, and 2409 of this Appendix and section 3108 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of this Appendix and Tables.

PRIOR PROVISIONS

A prior section 2403, Pub. L. 91–184, §4, Dec. 30, 1969, 83 Stat. 842; Pub. L. 92–412, title I, §104(a), (b)(1), Aug. 29, 1972, 86 Stat. 644, 645; Pub. L. 93–500, §§3(a), 5(a), 7, 9, 10, 12, Oct. 29, 1974, 88 Stat. 1552–1557; Pub. L. 95–52, title I, §§103(a), (b)(1)–(3), (c), 104–110, 113(b), title II, §201(b), June 22, 1977, 91 Stat. 235–239, 241, 246; Pub. L. 95–223, title III, §301(a), (b)(1), Dec. 28, 1977, 91 Stat. 1629; Pub. L. 95–384. §6(d)(2), Sept. 26, 1978, 92 Stat. 731; Pub. L. 95–435, §5(d), Oct. 10, 1978, 92 Stat. 1052; Pub. L. 96–67, §2, Sept. 21, 1979, 93 Stat. 415, setting forth provisions relating to authorities to effectuate policies and limitations on exercise of authorities, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (a)(2)(A). Pub. L. 100–418, §2412(1), inserted exception authorizing the Secretary to establish a type of distribution license appropriate to consignees in the People's Republic of China.

Subsec. (a)(2)(B). Pub. L. 100–418, §2412(2), inserted ''(except the People's Republic of China)'' after ''controlled countries''.

Subsec. (g). Pub. L. 100–418, §2411, added subsec. (g).

1985—Subsec. (a)(2). Pub. L. 99–64, §104(a), amended par. (2) generally, substituting provisions relating to validated licenses authorizing multiple exports including, but not limited to, distribution licenses, comprehensive operations licenses, project licenses, and service supply licenses, for former provisions which read: ''A qualified general license, authorizing multiple exports, issued pursuant to an application by the exporter.''

Subsec. (b). Pub. L. 99–64, §104(b), substituted ''Control list'' for ''Commodity control list'' in heading and, in text, substituted ''control list'' for ''commodity control list'' and ''stating license requirements (other than for general licenses) for exports of goods and technology under this Act'' for ''consisting of any goods or technology subject to export controls under this Act''.

Subsec. (c). Pub. L. 99–64, §104(c), substituted ''sufficient'' for ''significant'', inserted ''so as to render the controls ineffective in achieving their purposes'', and inserted provisions directing that, in complying with the provisions of this subsection, the President shall give strong emphasis to bilateral or multilateral negotiations to eliminate foreign availability, and that the Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

Subsec. (f). Pub. L. 99–64, §104(d), amended subsec. (f) generally, substituting ''representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of goods and technology'' for ''representatives of the business sector in order to obtain their views on export control policy and the foreign availability of goods and technology''.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EXECUTIVE ORDER NO. 11533

Ex. Ord. No. 11533, June 4, 1970, 35 F.R. 8799, as amended by Ex. Ord. No. 11907, Mar. 1, 1976, 41 F.R. 9085, which provided for the administration of the Export Administration Act of 1969, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out below.

EXECUTIVE ORDER NO. 11677

Ex. Ord. No. 11677, Aug. 1, 1972, 37 F.R. 15483, formerly set out as a note under this section, which provided for the regulation of exports, was revoked by Ex. Ord. No. 11683, Aug. 29, 1972, 37 F.R. 17813.

EXECUTIVE ORDER NO. 11683

Ex. Ord. No. 11683, Aug. 29, 1972, 37 F.R. 17813, which revoked Ex. Ord. No. 11677, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out below.

EXECUTIVE ORDER NO. 11798

Ex. Ord. No. 11798, Aug. 14, 1974, 39 F.R. 29567, which provided for the continuing regulation of exports, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out below.

EXECUTIVE ORDER NO. 11818

Ex. Ord. No. 11818, Nov. 5, 1974, 39 F.R. 39429, which provided for the continuing regulation of exports, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out below.

EXECUTIVE ORDER NO. 11940

Ex. Ord. No. 11940, Sept. 30, 1976, 41 F.R. 43707, which provided for the continuing regulation of exports, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out below.

EX. ORD. NO. 12002. ADMINISTRATION OF EXPORT ADMINISTRATION ACT

Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, as amended by Ex. Ord. No. 12755, Mar. 12, 1991, 56 F.R. 11057; Ex. Ord. No. 13286, § 54, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Except as provided in Section 2, the power, authority, and discretion conferred upon the President by the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), hereinafter referred to as the Act, are delegated to the Secretary of Commerce, with the power of successive redelegation.

SEC. 2. (a) The power, authority and discretion conferred upon the President in Sections 4(h) and 4(l) of the Act are retained by the President.

(b) The power, authority and discretion conferred upon the President in Section 3(8) of the Act [section 2402(8) of this Appendix], which directs that every reasonable effort be made to secure the removal or reduction of assistance by foreign countries to international terrorists through cooperation and agreement, are delegated to the Secretary of State, with the power of successive redelegation.

SEC. 3. The Export Administration Review Board, hereinafter referred to as the Board, which was established by Executive Order No. 11533 of June 4, 1970, as amended, is hereby continued. The Board shall continue to have as its members, the Secretary of Commerce, who shall be Chairman of the Board, the Secretary of State, and the Secretary of Defense. The Secretary of Energy, the Secretary of Homeland Security, and the Director of the United States Arms Control and Disarmament Agency shall be members of the Board, and shall participate in meetings that consider issues involving nonproliferation of armaments and other issues within their respective statutory and policy-making authorities. The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence shall be non-voting members of the Board. No alternate Board members shall be designated, but the acting head or deputy head of any department or agency may serve in lieu of the head of the concerned department or agency. The Board may invite the heads of other United States Government departments or agencies, other than the agencies represented by the Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

SEC. 4. The Secretary of Commerce may from time to time refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary of Commerce shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or of the head of any other United States Government department or agency having any interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, concerns about the nonproliferation of armaments, and the domestic economy, and shall make recommendation thereon to the Secretary of Commerce.

SEC. 5. The President may at any time (a) prescribe rules and regulations applicable to the power, authority, and discretion referred to in this Order, and (b) communicate to the Secretary of Commerce such specific directives applicable thereto as the President shall determine. The Secretary of Commerce shall from time to time report to the President upon the administration of the Act and, as the Secretary deems necessary, may refer to the President recommendations made by the Board under Section 4 of this Order. Neither the provisions of this section nor those of Section 4 shall be construed as limiting the provisions of Section 1 of this Order.

SEC. 6. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under, or continued in existence by, the Executive orders revoked in Section 7 of this Order, and not revoked administratively or legislatively, shall remain in full force and effect under this Order until amended, modified, or terminated by proper authority. The revocations in Section 7 of this Order shall not affect any violation of any rules, regulations, orders, licenses or other forms of administrative action under those Orders during the period those Orders were in effect.

SEC. 7. Executive Order No. 11533 of June 4, 1970, Executive Order No. 11683 of August 29, 1972, Executive Order No. 11798 of August 14, 1974, Executive Order No. 11818 of November 5, 1974, Executive Order No. 11907 of March 1, 1976, and Executive Order No. 11940 of September 30, 1976 are hereby revoked.

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

EX. ORD. NO. 12214. ADMINISTRATION OF EXPORT ADMINISTRATION ACT

Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, provided:

By the authority vested in me as President of the United States of America by Section 4(e) of the Export Administration Act of 1979 (Public Law 96–72; 50 U.S.C. App. 2403(e)), it is hereby ordered as follows:

1–101. Except as provided in Section 1–102, the functions conferred upon the President by the provisions of the Export Administration Act of 1979, hereinafter referred to as the Act (Public Law 96–72; 50 U.S.C. App. 2401 et seq.), are delegated to the Secretary of Commerce.

1–102. (a) The functions conferred upon the President by Sections 4(e), 5(c), 5(f)(1), 5(h)(6), 6(k), 7(d)(2), 10(g) and 20 of the Act [50 U.S.C. App. 2403(e), 2404(c), 2404(f)(1), 2404(h)(6), 2405(k), 2406(d)(2), 2409(g) and 2419] are reserved to the President.

(b) The functions conferred upon the President by Sections 5(f)(4), 5(i), and 6(g) of the Act [50 U.S.C. App. 2404(f)(4), 2404(i), and 2405(g)] are delegated to the Secretary of State.

1–103. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made,

issued or otherwise taken under, or continued in existence by, Section 21 of the Act [50 U.S.C. App. 2420] or Executive Order No. 12002 [set out above], and not revoked administratively or legislatively, shall remain in full force and effect until amended, modified, or terminated by proper authority. This Order does not supersede or otherwise affect Executive Order No. 12002.

1–104. Except to the extent inconsistent with this Order, all actions previously taken pursuant to any function delegated or assigned by this Order shall be deemed to have been taken and authorized by this Order.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12264

Ex. Ord. No. 12264, Jan. 15, 1981, 46 F.R. 4659, which related to the Federal policy regarding the export of banned or significantly restricted substances, was revoked by Ex. Ord. No. 12290, Feb. 17, 1981, 46 F.R. 12943, set out below.

EX. ORD. NO. 12290. IMPLEMENTATION OF EXPORT ADMINISTRATION ACT WITH MINIMUM REGULATORY BURDEN

Ex. Ord. No. 12290, Feb. 17, 1981, 46 F.R. 12943, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to ensure that the Export Administration Act of 1979 [sections 2401 to 2420 of this Appendix] is implemented with the minimum regulatory burden, Executive Order No. 12264 of January 15, 1981, entitled ''On Federal Policy Regarding the Export of Banned or Significantly Restricted Substances,'' is hereby revoked.

RONALD REAGAN.

CONTINUATION OF EXPORT CONTROL REGULATIONS

Provisions relating to continued effectiveness of the Export Administration Act of 1979, 50 U.S.C. App. 2401 et seq., and to issuance and continued effectiveness of rules, regulations, orders, licenses, and other forms of administrative action and delegations of authority relating to administration of that Act, were contained in the following:

Ex. Ord. No. 13222, Aug. 17, 2001, 66 F.R. 44025, listed in a table under section 1701 of Title 50, War and National Defense.

Ex. Ord. No. 13206, Apr. 4, 2001, 66 F.R. 18397, listed in a table under section 1701 of Title 50.

Ex. Ord. No. 12924, Aug. 19, 1994, 59 F.R. 43437, listed in a table under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 13206, §1, Apr. 4, 2001, 66 F.R. 18397.

Ex. Ord. No. 12923, June 30, 1994, 59 F.R. 34551, listed in a table under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12924, §4, Aug. 19, 1994, 59 F.R. 43438.

Ex. Ord. No. 12867, Sept. 30, 1993, 58 F.R. 51747, listed in a table under section 1701 of Title 50.

Ex. Ord. No. 12730, Sept. 30, 1990, 55 F.R. 40373, listed in a table under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12867, Sept. 30, 1993, 58 F.R. 51747.

Ex. Ord. No. 12525, July 12, 1985, 50 F.R. 28757, listed in a table under section 1701 of Title 50.

Ex. Ord. No. 12470, Mar. 30, 1984, 49 F.R. 13099, listed in a table under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12525, July 12, 1985, 50 F.R. 28757.

Ex. Ord. No. 12451, Dec. 20, 1983, 48 F.R. 56563, listed in a table under section 1701 of Title 50.

Ex. Ord. No. 12444, Oct. 14, 1983, 48 F.R. 48215, listed in a table under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12451, Dec. 20, 1983, 48 F.R. 56563.

EX. ORD. NO. 12981. ADMINISTRATION OF EXPORT CONTROLS

Ex. Ord. No. 12981, Dec. 5, 1995, 60 F.R. 62981, as amended by Ex. Ord. No. 13020, Oct. 12, 1996, 61 F.R. 54079; Ex. Ord. No. 13026, §1(b), Nov. 15, 1996, 61 F.R. 58767; Ex. Ord. No. 13117, Mar. 31, 1999, 64 F.R. 16591, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et. seq.*) (''the Act''), and in order to take additional steps with respect to the national emergency described and declared in Executive Order No. 12924 of August 19, 1994 [listed in a table under section 1701 of Title 50, War and National Defense], and continued on August 15, 1995, I, WILLIAM J. CLINTON, President of the United States of America, find that it is necessary for the procedures set forth below to apply to export license applications submitted under the Act and the Export Administration Regulations (15 C.F.R. Part 730 *et. seq.*) (''the Regulations'') or under any renewal of, or successor to, the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et. seq.*) (''the Export Administration Act''), and the Regulations. Accordingly, it is hereby ordered as follows:

SECTION 1. *License Review*. To the extent permitted by law and consistent with Executive Order No. 12924 of August 19, 1994, the power, authority, and discretion conferred upon the Secretary of Commerce (''the Secretary'') under the Export Administration Act to require, review, and make final determinations with regard to export licenses, documentation, and other forms of information submitted to the Department of Commerce pursuant to the Act and the Regulations or under any renewal of, or successor to, the Export Administration Act and the Regulations, with the power of successive redelegation, shall continue. The Departments of State, Defense, and Energy each shall have the authority to review any export license application submitted to the Department of Commerce pursuant to the Act and the Regulations or under any renewal of, or successor to, the Export Administration Act and the Regulations. The Secretary may refer license applications to other United States Government departments or agencies for review as appropriate. In the event that a department or agency determines that certain types of applications need not be referred to it, such department or agency shall notify the Department of Commerce as to the specific types of such applications that it does not wish to review. All departments or agencies shall promptly respond, on a case-by-case basis, to requests from other departments or agencies for historical information relating to past license applications.

SEC. 2. *Determinations*. (a) All license applications submitted under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, shall be resolved or referred to the President no later than 90 calendar days after registration of the completed license application.

(b) The following actions related to processing a license application submitted under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations shall not be counted in calculating the time periods prescribed in this order:

(1) *Agreement of the Applicant*. Delays upon which the Secretary and the applicant mutually agree.

(2) *Prelicense Checks*. Prelicense checks through government channels that may be required to establish the identity and reliability of the recipient of items controlled under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, provided that:

(A) the need for such prelicense check is established by the Secretary, or by another department or agency if the request for prelicense check is made by such department or agency;

(B) the Secretary requests the prelicense check within 5 days of the determination that it is necessary; and

(C) the Secretary completes the analysis of the result of the prelicense check within 5 days.

(3) *Requests for Government-To-Government Assurances*. Requests for government-to-government assurances of suitable end-use of items approved for export under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations,

when failure to obtain such assurances would result in rejection of the application, provided that:

(A) the request for such assurances is sent to the Secretary of State within 5 days of the determination that the assurances are required;

(B) the Secretary of State initiates the request of the relevant government within 10 days thereafter; and

(C) the license is issued within 5 days of the Secretary's receipt of the requested assurances. Whenever such prelicense checks and assurances are not requested within the time periods set forth above, they must be accomplished within the time periods established by this section.

(4) *Multilateral Reviews*. Multilateral review of a license application as provided for under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, as long as multilateral review is required by the relevant multilateral regime.

(5) *Consultations*. Consultation with other governments, if such consultation is provided for by a relevant multilateral regime or bilateral arrangement as a precondition for approving a license.

SEC. 3. *Initial Processing*. Within 9 days of registration of any license application, the Secretary shall, as appropriate:

(a) request additional information from the applicant. The time required for the applicant to supply the additional information shall not be counted in calculating the time periods prescribed in this section.

(b) refer the application and pertinent information to agencies or departments as stipulated in section 1 of this order, and forward to the agencies any relevant information submitted by the applicant that could not be reduced to electronic form.

(c) assure that the stated classification on the application is correct; return the application if a license is not required; and, if referral to other departments or agencies is not required, grant the application or notify the applicant of the Secretary's intention to deny the application.

SEC. 4. *Department or Agency Review*. (a) Each reviewing department or agency shall specify to the Secretary, within 10 days of receipt of a referral as specified in subsection 3(b), any information not in the application that would be required to make a determination, and the Secretary shall promptly request such information from the applicant. If, after receipt of the information so specified or other new information, a reviewing department or agency concludes that additional information would be required to make a determination, it shall promptly specify that additional information to the Secretary, and the Secretary shall promptly request such information from the applicant. The time that may elapse between the date the information is requested by the reviewing department or agency and the date the information is received by the reviewing department or agency shall not be counted in calculating the time periods prescribed in this order. Such information specified by reviewing departments or agencies is in addition to any information that may be requested by the Department of Commerce on its own initiative during the first 9 days after registration of an application.

(b) Within 30 days of receipt of a referral and all required information, a department or agency shall provide the Secretary with a recommendation either to approve or deny the license application. As appropriate, such recommendation may be with the benefit of consultation and discussions in interagency groups established to provide expertise and coordinate interagency consultation. A recommendation that the Secretary deny a license shall include a statement of the reasons for such recommendation that are consistent with the provisions of the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations and shall cite both the statutory and the regulatory bases for the recommendation to deny. A department or agency that fails to provide a recommendation within 30 days with a statement of reasons and the statutory and regulatory bases shall be deemed to have no objection to the decision of the Secretary.

SEC. 5. *Interagency Dispute Resolution*. (a) *Committees*. (1)(A) *Export Administration Review Board*. The Export Administration Review Board (''the Board''), which was established by Executive Order No. 11533 of June 4, 1970 [formerly set out above], and continued in Executive Order No. 12002 of July 7, 1977 [set out above], is hereby continued. The Board shall have as its members, the Secretary, who shall be Chair of the Board, the Secretary of State, the Secretary of Defense, and the Secretary of Energy[.] The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence shall be nonvoting members of the Board. No alternate Board members shall be designated, but the acting head or deputy head of any member department or agency may serve in lieu of the head of the concerned department or agency. The Board may invite the heads of other United States Government departments or agencies, other than the departments or agencies represented by the Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

(B) The Secretary may, from time to time, refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or the head of any other United States Government department or agency having any interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, the domestic economy, and concerns about the proliferation of armaments, weapons of mass destruction, missile delivery systems, and advanced conventional weapons and shall make recommendations thereon to the Secretary.

(2) *Advisory Committee on Export Policy*. An Advisory Committee on Export Policy (''ACEP'') is established and shall have as its members the Assistant Secretary of Commerce for Export Administration, who shall be Chair of the ACEP, and Assistant Secretary-level representatives of the Departments of State, Defense, and Energy[.] Appropriate representatives of the Joint Chiefs of Staff and of the Nonproliferation Center of the Central Intelligence Agency shall be nonvoting members of the ACEP. Representatives of the departments or agencies shall be the appropriate Assistant Secretary or equivalent (or appropriate acting Assistant Secretary or equivalent in lieu of the Assistant Secretary or equivalent) of the concerned department or agency, or appropriate Deputy Assistant Secretary or equivalent (or the appropriate acting Deputy Assistant Secretary or equivalent in lieu of the Deputy Assistant Secretary or equivalent) of the concerned department or agency. Regardless of the department or agency representative's rank, such representative shall speak and vote at the ACEP on behalf of the appropriate Assistant Secretary or equivalent of such department or agency. The ACEP may invite Assistant Secretary-level representatives of other United States Government departments or agencies, other than the departments and agencies represented by the ACEP members, to participate in the activities of the ACEP when matters of interest to such departments or agencies are under consideration.

(3)(A) *Operating Committee*. An Operating Committee (''OC'') of the ACEP is established. The Secretary shall appoint its Chair, who shall also serve as Executive Secretary of the ACEP. Its other members shall be representatives of appropriate agencies in the Departments of Commerce, State, Defense, and Energy[.] The appropriate representatives of the Joint Chiefs of Staff and the Nonproliferation Center of the Central Intelligence Agency shall be nonvoting members of the OC. The OC may invite representatives of other United States Government departments or agencies, other

than the departments and agencies represented by the OC members, to participate in the activities of the OC when matters of interest to such departments or agencies are under consideration.

(B) The OC shall review all license applications on which the reviewing departments and agencies are not in agreement. The Chair of the OC shall consider the recommendations of the reviewing departments and agencies and inform them of his or her decision on any such matters within 14 days after the deadline for receiving department and agency recommendations. However, for license applications concerning commercial communication satellites and hot-section technologies for the development, production, and overhaul of commercial aircraft engines that are transferred from the United States Munitions List to the Commerce Control List pursuant to regulations issued by the Departments of Commerce and State after the date of this order, the Chair of the OC shall inform reviewing departments and agencies of the majority vote decision of the OC. As described below, any reviewing department or agency may appeal the decision of the Chair of the OC, or the majority vote decision of the OC in cases concerning the commercial communication satellites and hot-section technologies described above, to the Chair of the ACEP. In the absence of a timely appeal, the Chair's decision (or the majority vote decision in the case of license applications concerning the commercial communication satellites and hot-section technologies described above) will be final.

(b) *Resolution Procedures.* (1) If any department or agency disagrees with a licensing determination of the Department of Commerce made through the Chair of the OC (or a majority vote decision of the OC in the case of license applications concerning the commercial communication satellites and the hot-section technologies described in section 5(a)(3)(B)), it may appeal the matter to the ACEP for resolution. A department or agency must appeal a matter within 5 days of such a decision. Appeals must be in writing from an official appointed by the President, by and with the advice and consent of the Senate, or an officer properly acting in such capacity, and must cite both the statutory and the regulatory bases for the appeal. The ACEP shall review all departments' and agencies' information and recommendations, and the Chair of the ACEP shall inform the reviewing departments and agencies of the majority vote decision of the ACEP within 11 days from the date of receiving notice of the appeal. Within 5 days of the majority vote decision, any dissenting department or agency may appeal the decision by submitting a letter from the head of the department or agency to the Secretary in his or her capacity as the Chair of the Board. Such letter shall cite both the statutory and the regulatory bases for the appeal. Within the same 5-day period, the Secretary may call a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the majority vote decision of the ACEP shall be final.

(2) The Board shall review all departments' and agencies' information and recommendations, and such other export control matters as may be appropriate. The Secretary shall inform the reviewing departments and agencies of the majority vote of the Board within 11 days from the date of receiving notice of appeal. Within 5 days of the decision, any department or agency dissenting from the majority vote decision of the Board may appeal the decision by submitting a letter from the head of the dissenting department or agency to the President. In the absence of a timely appeal, the majority vote decision of the Board shall be final.

SEC. 6. *Encryption Products.* In conducting the license review described in section 1 above, with respect to export controls of encryption products that are or would be, on November 15, 1996, designated as defense articles in Category XIII of the United States Munitions List and regulated by the United States Department of State pursuant to the Arms Export Control Act, 22 U.S.C. 2778 *et seq.*, but that subsequently are placed on the Commerce Control List in the Export Administration Regulations, the Departments of State, Defense, Energy, and Justice shall have the opportunity to review any export license application submitted to the Department of Commerce. The Department of Justice shall, with respect to such encryption products, be a voting member of the Export Administration Review Board described in section 5(a)(1) of this order and of the Advisory Committee on Export Policy described in section 5(a)(2) of this order. The Department of Justice shall be a full member of the Operating Committee of the ACEP described in section 5(a)(3) of this order, and of any other committees and consultation groups reviewing export controls with respect to such encryption products.

SEC. 7. The license review process in this order shall take effect beginning with those license applications registered by the Secretary 60 days after the date of this order and shall continue in effect to the extent not inconsistent with any renewal of the Export Administration Act, or with any successor to that Act.

SEC. 8. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any rights to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

EX. ORD. NO. 13026. ADMINISTRATION OF EXPORT CONTROLS ON ENCRYPTION PRODUCTS

Ex. Ord. No. 13026, Nov. 15, 1996, 61 F.R. 58767, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and in order to take additional steps with respect to the national emergency described and declared in Executive Order 12924 of August 19, 1994 [listed in a table under section 1701 of Title 50, War and National Defense], and continued on August 15, 1995, and on August 14, 1996, I, WILLIAM J. CLINTON, President of the United States of America, have decided that the provisions set forth below shall apply to administration of the export control system maintained by the Export Administration Regulations, 15 CFR Part 730 *et seq.* (''the EAR''). Accordingly, it is hereby ordered as follows:

SECTION 1. *Treatment of Encryption Products.* In order to provide for appropriate controls on the export and foreign dissemination of encryption products, export controls of encryption products that are or would be, on this date, designated as defense articles in Category XIII of the United States Munitions List and regulated by the United States Department of State pursuant to the Arms Export Control Act, 22 U.S.C. 2778 *et seq.* (''the AECA''), but that subsequently are placed on the Commerce Control List in the EAR, shall be subject to the following conditions: (a) I have determined that the export of encryption products described in this section could harm national security and foreign policy interests even where comparable products are or appear to be available from sources outside the United States, and that facts and questions concerning the foreign availability of such encryption products cannot be made subject to public disclosure or judicial review without revealing or implicating classified information that could harm United States national security and foreign policy interests. Accordingly, sections 4(c) and 6(h)(2)–(4) of the Export Administration Act of 1979 (''the EAA''), 50 U.S.C. App. 2403(c) and 2405(h)(2)–(4), as amended and as continued in effect by Executive Order 12924 of August 19, 1994, and by notices of August 15,

1995, and August 14, 1996, all other analogous provisions of the EAA relating to foreign availability, and the regulations in the EAR relating to such EAA provisions, shall not be applicable with respect to export controls on such encryption products. Notwithstanding this, the Secretary of Commerce (''Secretary'') may, in his discretion, consider the foreign availability of comparable encryption products in determining whether to issue a license in a particular case or to remove controls on particular products, but is not required to issue licenses in particular cases or to remove controls on particular products based on such consideration;

(b) [Amended Ex. Ord. No. 12981, set out above;]

(c) Because the export of encryption software, like the export of other encryption products described in this section, must be controlled because of such software's functional capacity, rather than because of any possible informational value of such software, such software shall not be considered or treated as ''technology,'' as that term is defined in section 16 of the EAA (50 U.S.C. App. 2415) and in the EAR (61 Fed. Reg. 12714, March 25, 1996);

(d) With respect to encryption products described in this section, the Secretary shall take such actions, including the promulgation of rules, regulations, and amendments thereto, as may be necessary to control the export of assistance (including training) to foreign persons in the same manner and to the same extent as the export of such assistance is controlled under the AECA, as amended by section 151 of Public Law 104–164 [see 22 U.S.C. 2778(b)(1)(A)];

(e) Appropriate controls on the export and foreign dissemination of encryption products described in this section may include, but are not limited to, measures that promote the use of strong encryption products and the development of a key recovery management infrastructure; and

(f) Regulation of encryption products described in this section shall be subject to such further conditions as the President may direct.

SEC. 2. *Effective Date*. The provisions described in section 1 shall take effect as soon as any encryption products described in section 1 are placed on the Commerce Control List in the EAR.

SEC. 3. *Judicial Review*. This order is intended only to improve the internal management of the executive branch and to ensure the implementation of appropriate controls on the export and foreign dissemination of encryption products. It is not intended to, and does not, create any rights to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 2403–1. Repealed. Pub. L. 103–199, title II, § 203(b), Dec. 17, 1993, 107 Stat. 2322

Section, Pub. L. 93–365, title VII, § 709, Aug. 5, 1974, 88 Stat. 408, related to review by Secretary of Defense of applications for export to controlled country of any goods, technology, or industrial techniques developed with Department of Defense funds for purpose of determining whether such export would significantly increase military capability of such country.

§§ 2403–1a, 2403a. Omitted

CODIFICATION

Section 2403–1a, Pub. L. 91–184, § 4A, as added Pub. L. 95–52, title II, § 201(a), June 22, 1977, 91 Stat. 244, which set forth provisions prohibiting United States persons from participating in foreign boycotts and administrative enforcement of such prohibitions, expired on Sept. 3, 1979.

Section 2403a, Pub. L. 91–184, § 4B, formerly § 4A, as added Pub. L. 93–500, § 8, Oct. 29, 1974, 88 Stat. 1554, renumbered Pub. L. 95–52, title II, § 201(a), June 22, 1977, 91 Stat. 244, which set forth procedures applicable for relief from export controls upon showing of hardship, expired on Sept. 30, 1979.

§ 2404. National security controls

(a) Authority

(1) In order to carry out the policy set forth in section 3(2)(A) of this Act [section 2402(2)(A) of this Appendix], the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. For purposes of the preceding sentence, the term ''affiliates'' includes both governmental entities and commercial entities that are controlled in fact by controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act [section 2403(a) of this Appendix].

(2) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States.

(4)(A) No authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States to any country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee, or pursuant to an agreement described in subsection (k) of this section. The Secretary may require any person reexporting any goods or technology under this subparagraph to notify the Secretary of such reexports.

(B) Notwithstanding subparagraph (A), the Secretary may require authority or permission to reexport the following:

(i) supercomputers;

(ii) goods or technology for sensitive nuclear uses (as defined by the Secretary);

(iii) devices for surreptitious interception of wire or oral communications; and

(iv) goods or technology intended for such end users as the Secretary may specify by regulation.

(5)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States from any country when the goods or technology to be reexported are incorporated in another good and—

(i) the value of the controlled United States content of that other good is 25 percent or less of the total value of the good; or

(ii) the export of the goods or technology to a controlled country would require only notification of the participating governments of the Coordinating Committee.

For purposes of this paragraph, the ''controlled United States content'' of a good means those goods or technology subject to the jurisdiction of the United States which are incorporated in the good, if the export of those goods or technology from the United States to a country, at the time that the good is exported to that country, would require a validated license.

(B) The Secretary may by regulation provide that subparagraph (A) does not apply to the reexport of a supercomputer which contains goods or technology subject to the jurisdiction of the United States.

(6) Not later than 90 days after the date of the enactment of this paragraph [Aug. 23, 1988], the Secretary shall issue regulations to carry out paragraphs (4) and (5). Such regulations shall define the term ''supercomputer'' for purposes of those paragraphs.

(b) Policy toward individual countries

(1) In administering export controls for national security purposes under this section, the President shall establish as a list of controlled countries those countries set forth in section 620(f) of the Foreign Assistance Act of 1961 [22 U.S.C. 2370(f)], except that the President may add any country to or remove any country from such list of controlled countries if he determines that the export of goods or technology to such country would or would not (as the case may be) make a significant contribution to the military potential of such country or a combination of countries which would prove detrimental to the national security of the United States. In determining whether a country is added to or removed from the list of controlled countries, the President shall take into account—

(A) the extent to which the country's policies are adverse to the national security interests of the United States;

(B) the country's Communist or non-Communist status;

(C) the present and potential relationship of the country with the United States;

(D) the present and potential relationships of the country with countries friendly or hostile to the United States;

(E) the country's nuclear weapons capability and the country's compliance record with respect to multilateral nuclear weapons agreements to which the United States is a party; and

(F) such other factors as the President considers appropriate.

Nothing in the preceding sentence shall be interpreted to limit the authority of the President provided in this Act [sections 2401 to 2420 of this Appendix] to prohibit or curtail the export of any goods or technology to any country to which exports are controlled for national security purposes other than countries on the list of controlled countries specified in this paragraph. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors set forth in this paragraph.

(2)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to export goods or technology to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section, if the export of such goods or technology to the People's Republic of China or a controlled country on the date of the enactment of the Export Enhancement Act of 1988 [Aug. 23, 1988] would require only notification of the participating governments of the Coordinating Committee.

(B)(i) The Secretary may require a license for the export of goods or technology described in subparagraph (A) to such end users as the Secretary may specify by regulation.

(ii) The Secretary may require any person exporting goods or technology under this paragraph to notify the Secretary of those exports.

(C) The Secretary shall, within 3 months after the date of the enactment of the Export Enhancement Act of 1988 [Aug. 23, 1988], determine which countries referred to in subparagraph (A) are implementing an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

(i) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

(ii) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

(iii) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

(iv) a system of export control documentation to verify the movement of goods and technology; and

(v) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

The Secretary shall, at least once each year, review the determinations made under the preceding sentence with respect to all countries referred to in subparagraph (A). The Secretary may, as appropriate, add countries to, or remove countries from, the list of countries that are implementing an effective export control system in accordance with this subparagraph. No authority or permission to export may be required for the export of goods or technology to a country on such list.

(3)(A) No authority or permission may be required under this section to export to any country, other than a controlled country, any goods or technology if the export of the goods or technology to controlled countries would require only notification of the participating governments of the Coordinating Committee.

(B) The Secretary may require any person exporting any goods or technology under subparagraph (A) to notify the Secretary of those exports.

(c) Control list

(1) The Secretary shall establish and maintain, as part of the control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary of Defense may, within 20 days after receiving notification of the Secretary's determination, refer the matter to the President for resolution. The Secretary of Defense shall notify the Secretary of any such referral. The President shall, not later than 20 days after such referral, notify the Secretary of his determination with respect to the inclusion of such items on the list. Failure of the Secretary of Defense to notify the President or the Secretary, or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed by the Secretary regarding the inclusion of such items on the list.

(3) The Secretary shall conduct partial reviews of the list established pursuant to this subsection at least once each calendar quarter in order to carry out the policy set forth in section 3(2)(A) of this Act [section 2402(2)(A) of this Appendix] and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each quarterly review, the Secretary shall publish notice of that review in the Federal Register. The Secretary shall provide a 30-day period during each review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. After consultation with appropriate Government agencies, the Secretary shall make a determination of any revisions in the list within 30 days after the end of the review period. The concurrence or approval of any other department or agency is not required before any such revision is made. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall use the data developed from each review in formulating United States proposals relating to multilateral export controls in the group known as the Coordinating Committee. The Secretary shall further assess, as part of each review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section. All goods and technology on the list shall be reviewed at least once each year. The provisions of this paragraph apply to revisions of the list which consist of removing items from the list or making changes in categories of, or other specifications in, items on the list.

(4) The appropriate technical advisory committee appointed under subsection (h) of this section shall be consulted by the Secretary with respect to changes, pursuant to paragraph (2) or (3), in the list established pursuant to this subsection, and such technical advisory committee may submit recommendations to the Secretary with respect to such changes. The Secretary shall consider the recommendations of the technical advisory committee and shall inform the committee of the disposition of its recommendations.

(5)(A) Not later than 6 months after the date of the enactment of this paragraph [Aug. 23, 1988], the following shall no longer be subject to export controls under this section:

(i) All goods or technology the export of which to controlled countries on the date of the enactment of the Export Enhancement Act of 1988 [Aug. 23, 1988] would require only notification of the participating governments of the Coordinating Committee, except for those goods or technology on which the Coordinating Committee agrees to maintain such notification requirement.

(ii) All medical instruments and equipment, subject to the provisions of subsection (m) of this section.

(B) The Secretary shall submit to the Congress annually a report setting forth the goods and technology from which export controls have been removed under this paragraph.

(6)(A) Notwithstanding subsection (f) or (h)(6) of this section, any export control imposed under this section which is maintained unilaterally by the United States shall expire 6 months after the date of the enactment of this paragraph [Aug. 23, 1988], or 6 months after the export control is imposed, whichever date is later, except that—

(i) any such export controls on those goods or technology for which a determination of the Secretary that there is no foreign availability has been made under subsection (f) or (h)(6) of this section before the end of the applicable 6-month period and is in effect may be renewed for periods of not more than 6 months each, and

(ii) any such export controls on those goods or technology with respect to which the President, by the end of the applicable 6-month period, is actively pursuing negotiations with other countries to achieve multilateral export controls on those goods or technology may be renewed for 2 periods of not more than 6 months each.

(B) Export controls on goods or technology described in clause (i) or (ii) of subparagraph (A)

may be renewed only if, before each renewal, the President submits to the Congress a report setting forth all the controls being renewed and stating the specific reasons for such renewal.

(7) Notwithstanding any other provision of this subsection, after 1 year has elapsed since the last review in the Federal Register on any item within a category on the control list the export of which to the People's Republic of China would require only notification of the members of the group known as the Coordinating Committee, an export license applicant may file an allegation with the Secretary that such item has not been so reviewed within such 1-year period. Within 90 days after receipt of such allegation, the Secretary—

(A) shall determine the truth of the allegation;

(B) shall, if the allegation is confirmed, commence and complete the review of the item; and

(C) shall, pursuant to such review, submit a finding for publication in the Federal Register.

In such finding, the Secretary shall identify those goods or technology which shall remain on the control list and those goods or technology which shall be removed from the control list. If such review and submission for publication are not completed within that 90-day period, the goods or technology encompassed by such item shall immediately be removed from the control list.

(d) Militarily critical technologies

(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act [sections 2401 to 2420 of this Appendix]) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment,

(C) goods accompanied by sophisticated operation, application, or maintenance know-how, and

(D) keystone equipment which would reveal or give insight into the design and manufacture of a United States military system,

which are not possessed by, or available in fact from sources outside the United States to, controlled countries and which, if exported, would permit a significant advance in a military system of any such country.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act [sections 2401 to 2420 of this Appendix].

(4) The Secretary and the Secretary of Defense shall integrate items on the list of militarily critical technologies into the control list in accordance with the requirements of subsection (c) of this section. The integration of items on the list of militarily critical technologies into the control list shall proceed with all deliberate speed. Any disagreement between the Secretary and the Secretary of Defense regarding the integration of an item on the list of militarily critical technologies into the control list shall be resolved by the President. Except in the case of a good or technology for which a validated license may be required under subsection (f)(4) or (h)(6) of this section, a good or technology shall be included on the control list only if the Secretary finds that controlled countries do not possess that good or technology, or a functionally equivalent good or technology, and the good or technology or functionally equivalent good or technology is not available in fact to a controlled country from sources outside the United States in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section. The Secretary and the Secretary of Defense shall jointly submit a report to the Congress, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985], on actions taken to carry out this paragraph. For the purposes of this paragraph, assessment of whether a good or technology is functionally equivalent shall include consideration of the factors described in subsection (f)(3) of this section.

(5) The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies on an ongoing basis for the purpose of removing from the list of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may add to the list of militarily critical technologies any good or technology that the Secretary of Defense determines is militarily critical, consistent with the provisions of paragraph (2) of this subsection. If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the control list, consistent with the provisions of the fourth sentence of paragraph (4) of this subsection, the President shall resolve the disagreement.

(6) The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls on the products of that technology and equipment.

(7) The Secretary of Defense shall, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985], report to the Congress on efforts by the Department of Defense to assess the impact that the transfer of goods or technology on the list of militarily critical technologies to controlled countries has had or will have on the military capabilities of those countries.

(e) Export licenses

(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act [sections 2401 to 2420 of this Appendix]. Accordingly, it is the intent of Congress in this subsection to encourage the use of the multiple validated export licenses described in section 4(a)(2) of this Act [section 2403(a)(2) of this Appendix] in lieu of individual validated licenses.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

(3) The Secretary, subject to the provisions of subsection (*l*) of this section, shall not require an individual validated export license for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that has been lawfully exported from the United States.

(4) The Secretary shall periodically review the procedures with respect to the multiple validated export licenses, taking appropriate action to increase their utilization by reducing qualification requirements or lowering minimum thresholds, to combine procedures which overlap, and to eliminate those procedures which appear to be of marginal utility.

(5) The export of goods subject to export controls under this section shall be eligible, at the discretion of the Secretary, for a distribution license and other licenses authorizing multiple exports of goods, in accordance with section 4(a)(2) of this Act [section 2403(a)(2) of this Appendix]. The export of technology and related goods subject to export controls under this section shall be eligible for a comprehensive operations license in accordance with section 4(a)(2)(B) of this Act [section 2403(a)(2)(B) of this Appendix].

(6) Any application for a license for the export to the People's Republic of China of any good on which export controls are in effect under this section, without regard to the technical specifications of the good, for the purpose of demonstration or exhibition at a trade show shall carry a presumption of approval if—

(A) the United States exporter retains title to the good during the entire period in which the good is in the People's Republic of China; and

(B) the exporter removes the good from the People's Republic of China no later than at the conclusion of the trade show.

(f) Foreign availability

(1) Foreign availability to controlled countries

(A) The Secretary, in consultation with the Secretary of Defense and other appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to controlled countries from such sources in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a controlled country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign

availability under subparagraph (A) with respect to such goods or technology is warranted.

(2) Foreign availability to other than controlled countries

(A) The Secretary shall review, on a continuing basis, the availability to countries other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. If the Secretary determines, in accordance with procedures which the Secretary shall establish, that any goods or technology in sufficient quantity and of comparable quality are available in fact from sources outside the United States (other than availability under license from a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section), the Secretary may not, after the determination is made and during the period of such foreign availability, require a validated license for the export of such goods or technology to any country (other than a controlled country) to which the country from which the goods or technology is available does not place controls on the export of such goods or technology. The requirement with respect to a validated license in the preceding sentence shall not apply if the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a country (other than a controlled country) and which meets all other requirements for such an application, if the Secretary determines that such goods or technology are available from foreign sources to that country under the criteria established in subparagraph (A), unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

(3) Procedures for making determinations

(A) The Secretary shall make a foreign availability determination under paragraph (1) or (2) on the Secretary's own initiative or upon receipt of an allegation from an export license applicant that such availability exists. In making any such determination, the Secretary shall accept the representations of applicants made in writing and supported by reasonable evidence, unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In making determinations of foreign availability, the Secretary may consider such factors as cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, durability, quality of end products produced by the item proposed for export, and scale of production. For purposes of this subparagraph, ''evidence'' may include such items as foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

(B) In a case in which an allegation is received from an export license applicant, the Secretary shall, upon receipt of the allegation, submit for publication in the Federal Register notice of such receipt. Within 4 months after receipt of the allegation, the Secretary shall determine whether the foreign availability exists, and shall so notify the applicant. If the Secretary has determined that the foreign availability exists, the Secretary shall, upon making such determination, submit the determination for review to other departments and agencies as the Secretary considers appropriate. The Secretary's determination of foreign availability does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted. Not later than 1 month after the Secretary makes the determination, the Secretary shall respond in writing to the applicant and submit for publication in the Federal Register, that—

(i) the foreign availability does exist and—

(I) the requirement of a validated license has been removed,

(II) the President has determined that export controls under this section must be maintained notwithstanding the foreign availability and the applicable steps are being taken under paragraph (4), or

(III) in the case of a foreign availability determination under paragraph (1), the foreign availability determination will be submitted to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than 4 months beginning on the date of the publication; or

(ii) the foreign availability does not exist.

In any case in which the submission for publication is not made within the time period specified in the preceding sentence, the Secretary may not thereafter require a license for the export of the goods or technology with respect to which the foreign availability allegation was made. In the case of a foreign availability determination under paragraph (1) to which clause (i)(III) applies, no license for such export may be required after the end of

the 9-month period beginning on the date on which the allegation is received.

(4) Negotiations to eliminate foreign availability

(A) In any case in which export controls are maintained under this section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United States, the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. No later than the commencement of such negotiations, the President shall notify in writing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives that he has begun such negotiations and why he believes it is important to national security that export controls on the goods or technology involved be maintained.

(B) If, within 6 months after the President's determination that export controls be maintained, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export controls involved would prove detrimental to the national security of the United States. Whenever the President has reason to believe that goods or technology subject to export controls for national security purposes by the United States may become available from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(C) After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate or prevent foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

(5) Expedited licenses for items available to countries other than controlled countries

(A) In any case in which the Secretary finds that any goods or technology from foreign sources is of similar quality to goods or technology the export of which requires a validated license under this section and is available to a country other than a controlled country without effective restrictions, the Secretary shall designate such goods or technology as eligible for export to such country under this paragraph.

(B) In the case of goods or technology designated under subparagraph (A), then 20 working days after the date of formal filing with the Secretary of an individual validated license application for the export of those goods or technology to an eligible country, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless the license has been denied by the Secretary on account of an inappropriate end user. The Secretary may extend the 20-day period provided in the preceding sentence for an additional period of 15 days if the Secretary requires additional time to consider the application and so notifies the applicant.

(C) The Secretary may make a foreign availability determination under subparagraph (A) on the Secretary's own initiative, upon receipt of an allegation from an export license applicant that such availability exists, or upon the submission of a certification by a technical advisory committee of appropriate jurisdiction that such availability exists. Upon receipt of such an allegation or certification, the Secretary shall publish notice of such allegation or certification in the Federal Register and shall make the foreign availability determination within 30 days after such receipt and publish the determination in the Federal Register. In the case of the failure of the Secretary to make and publish such determination within that 30-day period, the goods or technology involved shall be deemed to be designated as eligible for export to the country or countries involved, for purposes of subparagraph (B).

(D) The provisions of paragraphs (1), (2), (3), and (4) do not apply with respect to determinations of foreign availability under this paragraph.

(6) Office of Foreign Availability

The Secretary shall establish in the Department of Commerce an Office of Foreign Availability, which shall be under the direction of the Under Secretary of Commerce for Export Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act [sections 2401 to 2420 of this Appendix]. The Secretary shall make available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability, during that 6-month period, including information on the training of personnel, the use of computers, and the use of Commercial Service Officers of the United States and Foreign Commercial Service. Such information shall also include a description of representative determinations made under this Act [sections 2401 to 2420 of this Appendix] during that 6-month period that foreign availability did or did not exist (as the case may be), together with an explanation of such determinations.

(7) Sharing of information

Each department or agency of the United States, including any intelligence agency, and

all contractors with any such department or agency, shall, upon the request of the Secretary and consistent with the protection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act [sections 2401 to 2420 of this Appendix]. Each such department or agency shall allow the Office of Foreign Availability access to any information from a laboratory or other facility within such department or agency.

(8) Removal of controls on less sophisticated goods or technology

In any case in which[1] Secretary may not, pursuant to paragraph (1), (2), (3), or (4) of this subsection or paragraph (6) of subsection (h) of this section, require a validated license for the export of goods or technology, then the Secretary may not require a validated license for the export of any similar goods or technology whose function, technological approach, performance thresholds, and other attributes that form the basis for export controls under this section do not exceed the technical parameters of the goods or technology from which the validated license requirement is removed under the applicable paragraph.

(9) Notice of all foreign availability assessments

Whenever the Secretary undertakes a foreign availability assessment under this subsection or subsection (h)(6), the Secretary shall publish notice of such assessment in the Federal Register.

(10) Availability defined

For purposes of this subsection and subsections (f) and (h), the term ''available in fact to controlled countries'' includes production or availability of any goods or technology in any country—

(A) from which the goods or technology is not restricted for export to any controlled country; or

(B) in which such export restrictions are determined by the Secretary to be ineffective.

For purposes of subparagraph (B), the mere inclusion of goods or technology on a list of goods or technology subject to bilateral or multilateral national security export controls shall not alone constitute credible evidence that a country provides an effective means of controlling the export of such goods or technology to controlled countries.

(g) Indexing

(1) In order to ensure that requirements for validated licenses and other licenses authorizing multiple exports are periodically removed as goods or technology subject to such requirements becomes obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology from such license requirements the anticipated needs of the military of controlled countries. Any such goods or technology which no longer meets the performance levels established by the regulations shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

(2)(A) In carrying out this subsection, the Secretary shall conduct annual reviews of the performance levels of goods or technology—

(i) which are eligible for export under a distribution license,

(ii) below which exports to the People's Republic of China require only notification of the governments participating in the group known as the Coordinating Committee, and

(iii) below which no authority or permission to export may be required under subsection (b)(2) or (b)(3) of this section.

The Secretary shall make appropriate adjustments to such performance levels based on these reviews.

(B) In any case in which the Secretary receives a request which—

(i) is to revise the qualification requirements or minimum thresholds of any goods eligible for export under a distribution license, and

(ii) is made by an exporter of such goods, representatives of an industry which produces such goods, or a technical advisory committee established under subsection (h) of this section,

the Secretary, after consulting with other appropriate Government agencies and technical advisory committees established under subsection (h) of this section, shall determine whether to make such revision, or some other appropriate revision, in such qualification requirements or minimum thresholds. In making this determination, the Secretary shall take into account the availability of the goods from sources outside the United States. The Secretary shall make a determination on a request made under this subparagraph within 90 days after the date on which the request is filed. If the Secretary's determination pursuant to such a request is to make a revision, such revision shall be implemented within 120 days after the date on which the request is filed and shall be published in the Federal Register.

(h) Technical advisory committees

(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their signifi-

[1] So in original. Probably should be followed by ''the''.

cance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, the intelligence community, and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act [sections 2401 to 2420 of this Appendix], with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act [section 2402(2)(A) of this Appendix]. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, (D) revisions of the control list (as provided in subsection (c)(4)), including proposed revisions of multilateral controls in which the United States participates, (E) the issuance of regulations, and (F) any other questions relating to actions designed to carry out the policy set forth in section 3(2)(A) of this Act [section 2402(2)(A) of this Appendix]. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

(5) To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act [sections 2401 to 2420 of this Appendix], shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that—

(A) the Secretary has removed the requirement of a validated license for the export of the goods or technology, on account of the foreign availability,

(B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, or

(C) the Secretary has determined on the basis of the investigation that the foreign availability does not exist.

To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, the President shall actively pursue such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States. After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

(i) Multilateral export controls

Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President shall enter into

negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the ''Committee'') with a view toward accomplishing the following objectives:

(1) Enhanced public understanding of the Committee's purpose and procedures, including publication of the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Periodic meetings of high-level representatives of participating governments for the purpose of coordinating export control policies and issuing policy guidance to the Committee.

(3) Strengthened legal basis for each government's export control system, including, as appropriate, increased penalties and statutes of limitations.

(4) Harmonization of export control documentation by the participating governments to verify the movement of goods and technology subject to controls by the Committee.

(5) Improved procedures for coordination and exchange of information concerning violations of the agreement of the Committee.

(6) Procedures for effective implementation of the agreement through uniform and consistent interpretations of export controls agreed to by the governments participating in the Committee.

(7) Coordination of national licensing and enforcement efforts by governments participating in the Committee, including sufficient technical expertise to assess the licensing status of exports and to ensure end-use verification.

(8) More effective procedures for enforcing export controls, including adequate training, resources, and authority for enforcement officers to investigate and prevent illegal exports.

(9) Agreement to provide adequate resources to enhance the functioning of individual national export control systems and of the Committee.

(10) Improved enforcement and compliance with the agreement through elimination of unnecessary export controls and maintenance of an effective control list.

(11) Agreement to enhance cooperation among members of the Committee in obtaining the agreement of governments outside the Committee to restrict the export of goods and technology on the International Control List, to establish an ongoing mechanism in the Committee to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the International Control List if such items continue to be available to controlled countries or if the control of the items no longer serves the common strategic objectives of the members of the Committee.

For purposes of reviews of the International Control List, the President may include as advisors to the United States delegation to the Committee representatives of industry who are knowledgeable with respect to the items being reviewed.

(j) Commercial agreements with certain countries

(1) Any United States firm, enterprise, or other nongovernmental entity which enters into an agreement with any agency of the government of a controlled country, that calls for the encouragement of technical cooperation and that is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report to the Secretary the agreement with such agency in sufficient detail.

(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

(k) Negotiations with other countries

The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries, including those countries not participating in the group known as the Coordinating Committee, regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act [section 2402(9) of this Appendix], as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions. In cases where such negotiations produce agreements on export restrictions comparable in practice to those maintained by the Coordinating Committee, the Secretary shall treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports to members of the Coordinating Committee are treated, including the same manner as exports are treated under subsection (b)(2) of this section and section 10(*o*) of this Act [section 2409(*o*) of this Appendix].

(*l*) Diversion of controlled goods or technology

(1) Whenever there is reliable evidence, as determined by the Secretary, that goods or technology which were exported subject to national security controls under this section to a controlled country have been diverted to an unauthorized use or consignee in violation of the conditions of an export license, the Secretary for as long as that diversion continues—

(A) shall deny all further exports, to or by the party or parties responsible for that diversion or who conspired in that diversion, of any goods or technology subject to national security controls under this section, regardless of whether such goods or technology are available from sources outside the United States; and

(B) may take such additional actions under this Act [sections 2401 to 2420 of this Appendix] with respect to the party or parties referred to in subparagraph (A) as the Secretary determines are appropriate in the circumstances to deter the further unauthorized use of the previously exported goods or technology.

(2) As used in this subsection, the term ''unauthorized use'' means the use of United States

goods or technology in the design, production, or maintenance of any item on the United States Munitions List, or the military use of any item on the International Control List of the Coordinating Committee.

(m) Goods containing controlled parts and components

Export controls may not be imposed under this section, or under any other provision of law, on a good solely on the basis that the good contains parts or components subject to export controls under this section if such parts or components—

(1) are essential to the functioning of the good,

(2) are customarily included in sales of the good in countries other than controlled countries, and

(3) comprise 25 percent or less of the total value of the good,

unless the good itself, if exported, would by virtue of the functional characteristics of the good as a whole make a significant contribution to the military potential of a controlled country which would prove detrimental to the national security of the United States.

(n) Security measures

The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act [section 2411(a) of this Appendix], and in consultation with the Director of the Federal Bureau of Investigation, shall provide advice and technical assistance to persons engaged in the manufacture or handling of goods or technology subject to export controls under this section to develop security systems to prevent violations or evasions of those export controls.

(*o*) Recordkeeping

The Secretary, the Secretary of Defense, and any other department or agency consulted in connection with a license application under this Act [sections 2401 to 2420 of this Appendix] or a revision of a list of goods or technology subject to export controls under this Act [sections 2401 to 2420 of this Appendix], shall make and keep records of their respective advice, recommendations, or decisions in connection with any such license application or revision, including the factual and analytical basis of the advice, recommendations, or decisions.

(p) National Security Control Office

To assist in carrying out the policy and other authorities and responsibilities of the Secretary of Defense under this section, there is established in the Department of Defense a National Security Control Office under the direction of the Under Secretary of Defense for Policy. The Secretary of Defense may delegate to that office such of those authorities and responsibilities, together with such ancillary functions, as the Secretary of Defense considers appropriate.

(q) Exclusion for agricultural commodities

This section does not authorize export controls on agricultural commodities, including fats, oils, and animal hides and skins.

(Pub. L. 96–72, § 5, Sept. 29, 1979, 93 Stat. 506; Pub. L. 99–64, title I, §§ 105(a)–(c)(1), (d)–(j), 106, 107, July 12, 1985, 99 Stat. 123–129; Pub. L. 100–418, title II, §§ 2413–2418(b), 2419, 2420(a), 2421, 2422, 2446, Aug. 23, 1988, 102 Stat. 1347–1358, 1369.)

PRIOR PROVISIONS

A prior section 2404, Pub. L. 91–184, § 5, Dec. 30, 1969, 83 Stat. 843; Pub. L. 92–412, title I, § 105, Aug. 29, 1972, 86 Stat. 645; Pub. L. 93–500, §§ 3(c), (d), 5(b), (c), 6, Oct. 29, 1974, 88 Stat. 1553, 1554; Pub. L. 95–52, title I, § 111, June 22, 1977, 91 Stat. 240, setting forth determinations, limitations, etc., respecting the control and monitoring of exports, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–418, § 2413, inserted provision defining ''affiliates'' to include both governmental entities and commercial entities that are controlled in fact by controlled countries.

Subsec. (a)(4) to (6). Pub. L. 100–418, § 2414, added pars. (4) to (6).

Subsec. (b)(2). Pub. L. 100–418, § 2415(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''No authority or permission to export may be required under this section before goods or technology are exported in the case of exports to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee, if the goods or technology is at such a level of performance characteristics that the export of the goods or technology to controlled countries requires only notification of the participating governments of the Coordinating Committee.''

Subsec. (b)(3). Pub. L. 100–418, § 2415(b), added par. (3).

Subsec. (c)(2). Pub. L. 100–418, § 2416(a), substituted ''If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary of Defense may, within 20 days after receiving notification of the Secretary's determination, refer the matter to the President for resolution. The Secretary of Defense shall notify the Secretary of any such referral. The President shall, not later than 20 days after such referral, notify the Secretary of his determination with respect to the inclusion of such items on the list. Failure of the Secretary of Defense to notify the President or the Secretary, or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed by the Secretary regarding the inclusion of such items on the list.'' for ''If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution.''

Subsec. (c)(3). Pub. L. 100–418, § 2416(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary shall review the list established pursuant to this subsection at least once each year in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each annual review, the Secretary shall publish notice of that annual review in the Federal Register. The Secretary shall provide an opportunity during such review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall further assess, as part of such review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section.''

Subsec. (c)(4). Pub. L. 100–418, § 2416(b)(3), added par. (4).

Subsec. (c)(5). Pub. L. 100–418, § 2416(c)(1), added par. (5).

Subsec. (c)(6), (7). Pub. L. 100–418, §2416(c)(2), (3), added pars. (6) and (7).

Subsec. (d)(5). Pub. L. 100–418, §2416(b)(2), substituted ''on an ongoing basis'' for ''at least annually''.

Subsec. (e)(6). Pub. L. 100–418, §2417, added par. (6).

Subsec. (f). Pub. L. 100–418, §2418(a), amended subsec. generally, revising and restating as pars. (1) to (10) provisions of former pars. (1) to (7).

Subsec. (g). Pub. L. 100–418, §2419, designated existing provisions as par. (1) and added par. (2).

Subsec. (h)(2). Pub. L. 100–418, §2420(a), added cls. (D) and (E), redesignated former cl. (E) as (F), and struck out former cl. (D) which read as follows: ''exports subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls, and''.

Subsec. (h)(6). Pub. L. 100–418, §2418(b), inserted at end ''After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.''

Subsec. (i). Pub. L. 100–418, §2421, substituted ''Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President'' for ''The President'' and inserted sentence at end authorizing the President, for purposes of reviews of the International Control List, to include as advisors to the United States delegation to the Committee representatives of industry who are knowledgeable with respect to the items being reviewed.

Subsec. (i)(1) to (11). Pub. L. 100–418, §2446, completely revised and expanded provisions enumerating the objectives of the negotiations, adding pars. (1) to (11) and striking out former pars. (1) to (9).

Subsec. (m). Pub. L. 100–418, §2422, amended subsec. generally, substituting provision relating to goods containing controlled parts and components for provision relating to goods containing microprocessors.

1985—Subsec. (a)(1). Pub. L. 99–64, §105(a)(1), inserted sentence providing that the authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries.

Subsec. (a)(2). Pub. L. 99–64, §105(a)(2), struck out designation ''(A)'' before ''Whenever the Secretary makes any revision'', and struck out subpar. (B) which read as follows: ''Whenever the Secretary denies any export license under this section, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restriction, if appropriate.''

Subsec. (a)(3). Pub. L. 99–64, §105(a)(3), struck out ''Such regulations shall not be based upon the assumption that such effective safeguards can be devised.''

Subsec. (b)(1). Pub. L. 99–64, §105(b)(1), designated existing provisions as par. (1) and provided that the President shall establish to a list of controlled countries which may be expanded or reduced by the President based upon certain enumerated factors, and struck out provisions which had stated that the policy of the United States toward individual countries should not be determined exclusively on the basis of that country's Communist or non-Communist status but rather on the country's relationships to the United States and countries friendly to the United States.

Pub. L. 99–64, §105(b)(3), substituted ''set forth in this paragraph'' for ''specified in the preceding sentence'' in last sentence.

Subsec. (b)(2). Pub. L. 99–64, §105(b)(2), added par. (2).

Subsec. (c)(1). Pub. L. 99–64, §105(c)(1)(A), struck out ''commodity'' before ''control list''.

Subsec. (c)(3). Pub. L. 99–64, §105(c)(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary shall issue regulations providing for review of the list established pursuant to this subsection not less frequently than every 3 years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, in order to carry out the policy set forth in section 3(2)(A) and the provisions of this section, and for the prompt issuance of such revisions of the list as may be necessary. Such regulations shall provide interested Government agencies and other affected or potentially affected parties with an opportunity, during such review, to submit written data, views, or arguments, with or without oral presentation. Such regulations shall further provide that, as part of such review, an assessment be made of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled under this section. The Secretary and any agency rendering advice with respect to export controls shall keep adequate records of all decisions made with respect to revision of the list of controlled goods and technology, including the factual and analytical basis for the decision, and, in the case of the Secretary, any dissenting recommendations received from any agency.''

Subsec. (d)(2). Pub. L. 99–64, §106(a)(1), added subpar. (D) and in provisions following subpar. (D) substituted '', or available in fact from sources outside the United States to, controlled countries'' for ''countries to which exports are controlled under this section''.

Subsec. (d)(4) to (7). Pub. L. 99–64, §106(a)(2), added pars. (4) to (7) and struck out former pars. (4) to (6) which read as follows:

''(4) The initial version of the list referred to in paragraph (2) shall be completed and published in an appropriate form in the Federal Register not later than October 1, 1980.

''(5) The list of militarily critical technologies developed primarily by the Secretary of Defense pursuant to paragraph (2) shall become a part of the commodity control list, subject to the provisions of subsection (c) of this section.

''(6) The Secretary of Defense shall report annually to the Congress on actions taken to carry out this subsection.''

Subsec. (e)(1). Pub. L. 99–64, §105(d)(1), substituted ''the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of individual validated licenses'' for ''a qualified general license in lieu of a validated license''.

Subsec. (e)(3) to (5). Pub. L. 99–64, §105(d)(2), added pars. (3) to (5) and struck out former pars. (3) and (4) which read as follows:

''(3) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a qualified general license, in lieu of a validated license, under this section for the export of goods or technology if the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party, but such export does not require the specific approval of the parties to such multilateral agreement.

''(4) Not later than July 1, 1980, the Secretary shall establish procedures for the approval of goods and technology that may be exported pursuant to a qualified general license.''

Subsec. (f)(1). Pub. L. 99–64, §107(a), (i), (j)(1), inserted ''the Secretary of Defense and other'' after ''The Secretary, in consultation with'', and substituted ''controlled countries'' for ''such destinations'' and ''comparable quality'' for ''sufficient quality''.

Subsec. (f)(2). Pub. L. 99–64, §107(i), substituted ''comparable quality'' for ''sufficient quality''.

Subsec. (f)(3). Pub. L. 99–64, §107(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''With respect to export controls imposed under this section, any determination of foreign availability which is the basis of a decision to grant a license for, or to remove a control on, the export of a good or technology, shall be made in writing and shall be supported by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In assessing foreign availability with respect to license applications, uncorroborated representations by applicants shall not be deemed sufficient evidence of foreign availability.''

Subsec. (f)(4). Pub. L. 99–64, § 107(c), (j)(2), substituted first three sentences for ''sentence providing that in any case in which, in accordance with this subsection, export controls are imposed under this section notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability'', and substituted ''controlled countries'' for ''countries to which exports are controlled under this section''.

Subsec. (f)(5). Pub. L. 99–64, § 107(d)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''In order to further carry out the policies set forth in this Act, the Secretary shall establish, within the Office of Export Administration of the Department of Commerce, a capability to monitor and gather information with respect to the foreign availability of any goods or technology subject to export controls under this Act.''

Subsec. (f)(6). Pub. L. 99–64, § 107(d)(2), substituted ''Office of Foreign Availability'' for ''Office of Export Administration''.

Subsec. (f)(7). Pub. L. 99–64, § 107(e), added par. (7).

Subsec. (g). Pub. L. 99–64, § 105(e), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''In order to ensure that requirements for validated licenses and qualified general licenses are periodically removed as goods or technology subject to such requirements become obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. Any such goods or technology which no longer meet the performance levels established by the latest such increase shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.''

Subsec. (h)(1). Pub. L. 99–64, § 107(f)(1), inserted reference to the intelligence community.

Subsec. (h)(2)(E). Pub. L. 99–64, § 107(f)(2), added cl. (E).

Subsec. (h)(6). Pub. L. 99–64, § 107(f)(3), (i), (j)(2), substituted ''controlled countries'' for ''countries to which exports are controlled under this section'', ''comparable quality'' for ''sufficient quality'', and ''the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification'' for ''and provides adequate documentation for such certification, in accordance with the procedures established pursuant to subsection (f)(1) of this section, the Secretary shall investigate such availability, and if such availability is verified, the Secretary shall remove the requirement of a validated license for the export of the goods or technology, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States'', struck out provision that, in any case in which the President determined that export controls under this section had to be maintained notwithstanding foreign availability, the Secretary had to publish that determination together with a concise statement of its basis and the estimated economic impact of the decision, inserted provisions directing the Secretary to investigate certified foreign availability and, not later than 90 days after the certification is made, submit a report to the technical advisory committee and the Congress, and added subpars. (A) to (C) and concluding provision.

Subsec. (i)(3). Pub. L. 99–64, § 105(f)(1), (2), redesignated par. (4) as (3) and substituted ''agreed to by members of the Committee'' for ''agreed to pursuant to paragraph (3)'', and struck out former par. (3) relating to agreement to reduce the scope of the export controls imposed by agreement of the Committee to a level acceptable to and enforceable by all governments participating in the Committee.

Subsec. (i)(4) to (9). Pub. L. 99–64, § 105(f)(3), added pars. (4) to (9). Former par. (4) redesignated (3).

Subsec. (j)(1). Pub. L. 99–64, § 105(g), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Any United States firm, enterprise, or other nongovernmental entity which, for commercial purposes, enters into any agreement with any agency of the government of a country to which exports are restricted for national security purposes, which agreement cites an intergovernmental agreement (to which the United States and such country are parties) calling for the encouragement of technical cooperation and is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report the agreement with such agency to the Secretary.''

Subsec. (k). Pub. L. 99–64, § 105(h), inserted '', including those countries not participating in the group known as the Coordinating Committee,'' after ''conducting negotiations with other countries'', and inserted provision that, in cases where such negotiations produce agreements on export restrictions comparable in practice to those maintained by the Coordinating Committee, the Secretary shall treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports to members of the Coordinating Committee are treated, including the same manner as exports are treated under subsection (b)(2) of this section and section 10(*o*) of this Act.

Subsec. (*l*). Pub. L. 99–64, § 105(i), struck out ''to military use'' after ''Diversion'' in heading, and amended text of subsec. (*l*), generally. Prior to amendment, subsec. (*l*) read as follows:

''(1) Whenever there is reliable evidence that goods or technology, which were exported subject to national security controls under this section to a country to which exports are controlled for national security purposes, have been diverted to significant military use in violation of the conditions of an export license, the Secretary for as long as that diversion to significant military use continues—

''(A) shall deny all further exports to the party responsible for that diversion of any goods or technology subject to national security controls under this section which contribute to that particular military use, regardless of whether such goods or technology are available to that country from sources outside the United States; and

''(B) may take such additional steps under this Act with respect to the party referred to in subparagraph (A) as are feasible to deter the further military use of the previously exported goods or technology.

''(2) As used in this subsection, the terms 'diversion to significant military use' and 'significant military use' means the use of United States goods or technology to design or produce any item on the United States Munitions List.''

Subsecs. (m) to (q). Pub. L. 99–64, § 105(j), added subsecs. (m) to (q).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 105(c)(2) of Pub. L. 99–64 provided that: ''The amendment made by paragraph (1)(B) of this subsection [amending this section] shall take effect on October 1, 1985.''

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix, with the exception of the functions conferred upon the President under subsecs. (f)(4) and (i) of this section which were delegated to the Secretary of State and the functions conferred upon the President under subsecs. (c), (f)(1), and (h)(6) of this section which were reserved to the President.

REVIEW OF EXPORT PROTECTIONS FOR MILITARY SUPERIORITY RESOURCES

Pub. L. 108–136, div. A, title XII, §1211, Nov. 24, 2003, 117 Stat. 1650, provided that:

''(a) REVIEW REQUIRED.—The Secretary of Defense shall carry out a review—

''(1) to identify goods or technology (as defined in section 16 of the Export Administration Act of 1979 (50 U.S.C. App. 2415)) that, if obtained by a potential adversary, could significantly undermine the military superiority or qualitative military advantage of the United States over potential adversaries or otherwise contribute to the acquisition of weapons of mass destruction and their delivery systems; and

''(2) to determine whether any of the items or technologies identified under paragraph (1) are not currently controlled for export purposes on either the Commerce Control List or the United States Munitions List.

''(b) ANNUAL REPORTS.—(1) Not later than March 1, 2004, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives an unclassified report, with a classified annex as necessary, on the results of the review under subsection (a).

''(2) For each of the next two years after the submission of the report under paragraph (1), the Secretary shall submit to those committees an update on that report. Such updates shall be submitted not later than March 1, 2005, and not later than March 1, 2006.''

REVIEW OF PROPOSED CHANGES TO EXPORT THRESHOLDS FOR COMPUTERS

Pub. L. 106–554, §1(a)(2) [title III, §314], Dec. 21, 2000, 114 Stat. 2763, 2763A–123, which provided that not more than 50 days after the date of the submission of the report referred to in subsec. (d) of section 1211 of Pub. L. 105–85 (set out below), the Comptroller General was to submit an assessment to Congress that contained an analysis of new computer performance levels proposed by the President under such section, was repealed by Pub. L. 110–161, div. H, title I, §1502(b), Dec. 26, 2007, 121 Stat. 2250.

RELEASE OF EXPORT INFORMATION BY DEPARTMENT OF COMMERCE TO OTHER AGENCIES FOR PURPOSE OF NATIONAL SECURITY ASSESSMENT

Pub. L. 105–261, div. A, title XV, §1522, Oct. 17, 1998, 112 Stat. 2179, provided that:

''(a) RELEASE OF EXPORT INFORMATION.—The Secretary of Commerce shall, upon the written request of an official specified in subsection (c), transmit to that official any information relating to exports that is held by the Department of Commerce and is requested by that official for the purpose of assessing national security risks. The Secretary shall transmit such information within 10 business days after receiving such a request.

''(b) NATURE OF INFORMATION.—The information referred to in subsection (a) includes information concerning—

''(1) export licenses issued by the Department of Commerce;

''(2) exports that were carried out under an export license issued by the Department of Commerce; and

''(3) exports from the United States that were carried out without an export license.

''(c) REQUESTING OFFICIALS.—The officials referred to in subsection (a) are the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the Director of Central Intelligence. Each of those officials may delegate to any other official within their respective departments and agency the authority to request information under subsection (a).''

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.]

EXPORT CONTROLS ON HIGH PERFORMANCE COMPUTERS

Pub. L. 105–85, div. A, title XII, subtitle B, Nov. 18, 1997, 111 Stat. 1932, as amended by Pub. L. 105–261, div. A, title XV, §1524, Oct. 17, 1998, 112 Stat. 2180; Pub. L. 106–65, div. A, title X, §1067(4), title XIV, §1407(c), Oct. 5, 1999, 113 Stat. 774, 801; Pub. L. 106–398, §1 [[div. A], title XII, §1234(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–330, provided that:

''SEC. 1211. EXPORT APPROVALS FOR HIGH PERFORMANCE COMPUTERS.

''(a) PRIOR APPROVAL OF EXPORTS AND REEXPORTS.—The President shall require that no digital computer with a composite theoretical performance level of more than 2,000 millions of theoretical operations per second (MTOPS) or with such other composite theoretical performance level as may be established subsequently by the President under subsection (d), may be exported or reexported without a license to a country specified in subsection (b) if the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, or the Director of the Arms Control and Disarmament Agency objects, in writing, to such export or reexport. Any person proposing to export or reexport such a digital computer shall so notify the Secretary of Commerce, who, within 24 hours after receiving the notification, shall transmit the notification to the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency.

''(b) COVERED COUNTRIES.—For purposes of subsection (a), the countries specified in this subsection are the countries listed as 'Computer Tier 3' eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997, subject to modification by the President under subsection (e).

''(c) TIME LIMIT.—Written objections under subsection (a) to an export or reexport shall be raised within 10 days after the notification is received under subsection (a). If such a written objection to the export or reexport of a computer is raised, the computer may be exported or reexported only pursuant to a license is-

sued by the Secretary of Commerce under the Export Administration Regulations of the Department of Commerce, without regard to the licensing exceptions otherwise authorized under section 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997. If no objection is raised within the 10-day period, the export or reexport is authorized.

''(d) ADJUSTMENT OF COMPOSITE THEORETICAL PERFORMANCE.—The President, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency, may establish a new composite theoretical performance level for purposes of subsection (a). Such new level shall not take effect until 60 days after the President submits to the congressional committees designated in section 1215 a report setting forth the new composite theoretical performance level and the justification for such new level. Each report shall, at a minimum—

''(1) address the extent to which high performance computers of a composite theoretical level between the level established in subsection (a) or such level as has been previously adjusted pursuant to this section and the new level, are available from other countries;

''(2) address all potential uses of military significance to which high performance computers at the new level could be applied; and

''(3) assess the impact of such uses on the national security interests of the United States.

''(e) ADJUSTMENT OF COVERED COUNTRIES.—

''(1) IN GENERAL.—The President, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency, may add a country to or remove a country from the list of covered countries in subsection (b), except that a country may be removed from the list only in accordance with paragraph (2).

''(2) DELETIONS FROM LIST OF COVERED COUNTRIES.—The removal of a country from the list of covered countries under subsection (b) shall not take effect until 120 days after the President submits to the congressional committees designated in section 1215 a report setting forth the justification for the deletion.

''(3) EXCLUDED COUNTRIES.—A country may not be removed from the list of covered countries under subsection (b) if—

''(A) the country is a 'nuclear-weapon state' (as defined by Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons) and the country is not a member of the North Atlantic Treaty Organization; or

''(B) the country is not a signatory of the Treaty on the Non-Proliferation of Nuclear Weapons and the country is listed on Annex 2 to the Comprehensive Nuclear Test-Ban Treaty.

''(f) CLASSIFICATION.—Each report under subsections (d) and (e) shall be submitted in an unclassified form and may, if necessary, have a classified supplement.

''(g) DELEGATION OF OBJECTION AUTHORITY WITHIN THE DEPARTMENT OF DEFENSE.—For the purposes of the Department of Defense, the authority to issue an objection referred to in subsection (a) shall be executed for the Secretary of Defense by an official at the Assistant Secretary level within the office of the Under Secretary of Defense for Policy. In implementing subsection (a), the Secretary of Defense shall ensure that Department of Defense procedures maximize the ability of the Department of Defense to be able to issue an objection within the 10-day period specified in subsection (c).

''(h) CALCULATION OF 60-DAY PERIOD.—The 60-day period referred to in subsection (d) shall be calculated by excluding the days on which either House of Congress is not in session because of an adjournment of the Congress sine die.

''SEC. 1212. REPORT ON EXPORTS OF HIGH PERFORMANCE COMPUTERS.

''(a) REPORT.—Not later than 60 days after the date of the enactment of this Act [Nov. 18, 1997], the President shall provide to the congressional committees specified in section 1215 a report identifying all exports of digital computers with a composite theoretical performance of more than 2,000 millions of theoretical operations per second (MTOPS) to all countries since January 25, 1996. For each export, the report shall identify—

''(1) whether an export license was applied for and whether one was granted;

''(2) the date of the transfer of the computer;

''(3) the United States manufacturer and exporter of the computer;

''(4) the MTOPS level of the computer; and

''(5) the recipient country and end user.

''(b) ADDITIONAL INFORMATION ON EXPORTS TO CERTAIN COUNTRIES.—In the case of exports to countries specified in subsection (c), the report under subsection (a) shall identify the intended end use for the exported computer and the assessment by the executive branch of whether the end user is a military end user or an end user involved in activities relating to nuclear, chemical, or biological weapons or missile technology. Information provided under this subsection may be submitted in classified form if necessary.

''(c) COVERED COUNTRIES.—For purposes of subsection (b), the countries specified in this subsection are—

''(1) the countries listed as 'Computer Tier 3' eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997; and

''(2) the countries listed in section 740.7(e) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997.

''SEC. 1213. POST-SHIPMENT VERIFICATION OF EXPORT OF HIGH PERFORMANCE COMPUTERS.

''(a) REQUIRED POST-SHIPMENT VERIFICATION.—The Secretary of Commerce shall conduct post-shipment verification of each digital computer with a composite theoretical performance of more than 2,000 millions of theoretical operations per second (MTOPS) that is exported from the United States, on or after the date of the enactment of this Act [Nov. 18, 1998], to a country specified in subsection (b).

''(b) COVERED COUNTRIES.—For purposes of subsection (a), the countries specified in this subsection are the countries listed as 'Computer Tier 3' eligible countries in section 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997, subject to modification by the President under section 1211(e).

''(c) ANNUAL REPORT.—The Secretary of Commerce shall submit to the congressional committees specified in section 1215 an annual report on the results of post-shipment verifications conducted under this section during the preceding year. Each such report shall include a list of all such items exported from the United States to such countries during the previous year and, with respect to each such export, the following:

''(1) The destination country.

''(2) The date of export.

''(3) The intended end use and intended end user.

''(4) The results of the post-shipment verification.

''(d) EXPLANATION WHEN VERIFICATION NOT CONDUCTED.—If a post-shipment verification has not been conducted in accordance with subsection (a) with respect to any such export during the period covered by a report, the Secretary shall include in the report for that period a detailed explanation of the reasons why such a post-shipment verification was not conducted.

''(e) ADJUSTMENT OF PERFORMANCE LEVELS.—Whenever a new composite theoretical performance level is established under section 1211(d), that level shall apply for purposes of subsection (a) of this section in lieu of the level set forth in subsection (a).

''SEC. 1214. GAO STUDY ON CERTAIN COMPUTERS; END USER INFORMATION ASSISTANCE.

''(a) IN GENERAL.—The Comptroller General of the United States shall submit to the congressional committees specified in section 1215 a study of the national security risks relating to the sale of computers with a composite theoretical performance of between 2,000 and

7,000 millions of theoretical operations per second (MTOPS) to end users in countries specified in subsection (c). The study shall also analyze any foreign availability of computers described in the preceding sentence and the impact of such sales on United States exporters.

''(b) END USER INFORMATION ASSISTANCE TO EXPORTERS.—The Secretary of Commerce shall establish a procedure by which exporters may seek information on questionable end users in countries specified in subsection (c) who are seeking to obtain computers described in subsection (a).

''(c) COVERED COUNTRIES.—For purposes of subsections (a) and (b), the countries specified in this subsection are the countries listed as 'Computer Tier 3' eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997.

''SEC. 1215. CONGRESSIONAL COMMITTEES.

''For purposes of sections 1211(d), 1212(a), 1213(c), and 1214(a) the congressional committees specified in those sections are the following:

''(1) The Committee on Banking, Housing, and Urban Affairs and the Committee on Armed Services of the Senate.

''(2) The Committee on International Relations [now Committee on Foreign Affairs] and the Committee on Armed Services of the House of Representatives.''

[Pub. L. 106–398, §1 [[div. A], title XII, §1234(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–331, provided that: ''The amendments made by subsection (a) [amending section 1211 of Pub. L. 105–85, set out above] shall apply to any new composite theoretical performance level established for purposes of section 1211(a) of the National Defense Authorization Act for Fiscal Year 1998 [Pub. L. 105–85] that is submitted by the President pursuant to section 1211(d) of that Act on or after the date of the enactment of this Act [Oct. 30, 2000].'']

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

REPORTS ON ADVANCED SUPERCOMPUTER SALES TO CERTAIN FOREIGN NATIONS

Pub. L. 105–85, div. C, title XXXI, §3157, Nov. 18, 1997, 111 Stat. 2045, as amended by Pub. L. 106–398, §1 [div. C, title XXXI, §3134], Oct. 30, 2000, 114 Stat. 1654, 1654A–456, provided that:

''(a) REPORTS.—The Secretary of Energy shall require that any company that is a participant in the Accelerated Strategic Computing Initiative (ASCI) program of the Department of Energy report to the Secretary and to the Secretary of Defense each sale by that company to a country designated as a Tier III country of a computer capable of operating at a speed in excess of 2,000 millions theoretical operations per second (MTOPS). The report shall include a description of the following with respect to each such sale:

''(1) The anticipated end-use of the computer sold.

''(2) The software included with the computer.

''(3) Any arrangement under the terms of the sale regarding—

''(A) upgrading the computer;

''(B) servicing the computer; or

''(C) furnishing spare parts for the computer.

''(b) COVERED COUNTRIES.—For purposes of this section, the countries designated as Tier III countries are the countries listed as 'computer tier 3' eligible countries in part 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997 (or any successor list).

''(c) QUARTERLY SUBMISSION OF REPORTS.—The Secretary of Energy shall require that reports under subsection (a) be submitted quarterly.

''(d) ANNUAL REPORT.—The Secretary of Energy shall submit to Congress an annual report containing all information received under subsection (a) during the preceding year. The first annual report shall be submitted not later than July 1, 1998.

''(e) ADJUSTMENT OF PERFORMANCE LEVELS.—Whenever a new composite theoretical performance level is established under section 1211(d) [Pub. L. 105–85, set out as a note above], that level shall apply for the purposes of subsection (a) of this section in lieu of the level set forth in subsection (a).''

NATIONAL SECURITY IMPLICATIONS OF UNITED STATES EXPORT CONTROL POLICY

Pub. L. 104–106, div. A, title XIII, §1322, Feb. 10, 1996, 110 Stat. 478, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Export controls remain an important element of the national security policy of the United States.

''(2) It is in the national security interest that United States export control policy be effective in preventing the transfer, to potential adversaries or combatants of the United States, of technology that threatens the national security or defense of the United States.

''(3) It is in the national security interest that the United States monitor aggressively the export of militarily critical technology in order to prevent its diversion to potential adversaries or combatants of the United States.

''(4) The Department of Defense relies increasingly on commercial and dual-use technologies, products, and processes to support United States military capabilities and economic strength.

''(5) The maintenance of the military advantage of the United States depends on effective export controls on dual-use items and technologies that are critical to the military capabilities of the Armed Forces.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the Secretary of Defense should evaluate license applications for the export of militarily critical commodities the export of which is controlled for national security reasons if those commodities are to be exported to certain countries of concern;

''(2) the Secretary of Defense should identify the dual-use items and technologies that are critical to the military capabilities of the Armed Forces, including the military use made of such items and technologies;

''(3) upon identification by the Secretary of Defense of the dual-use items and technologies referred to in paragraph (2), the President should ensure effective export controls or use unilateral export controls on dual-use items and technologies that are critical to the military capabilities of the Armed Forces (regardless of the availability of such items or technologies overseas) with respect to the countries that—

''(A) pose a threat to the national security interests of the United States; and

''(B) are not members in good standing of bilateral or multilateral agreements to which the United States is a party on the use of such items and technologies; and

''(4) the President, upon recommendation of the Secretary of Defense, should ensure effective controls on the re-export by other countries of dual-use items and technologies that are critical to the military capabilities of the Armed Forces.

''(c) ANNUAL REPORT.—(1) Not later than December 1 of each year through 1999, the President shall submit to the committees specified in paragraph (4) a report on the effect of the export control policy of the United States on the national security interests of the United States.

''(2) The report shall include the following:

''(A) A list setting forth each country determined by the Secretary of Defense, the intelligence community, and other appropriate agencies to be a rogue nation or potential adversary or combatant of the United States.

''(B) For each country so listed, a list of—

''(i) the categories of items that the United States currently prohibits for export to the country;

''(ii) the categories of items that may be exported from the United States with an individual license, and in such cases, any licensing conditions normally required and the policy grounds used for approvals and denials; and

''(iii) the categories of items that may be exported under a general license designated 'G-DEST'.

''(C) For each category of items listed under subparagraph (B)—

''(i) a statement whether a prohibition, control, or licensing requirement on a category of items is imposed pursuant to an international multilateral agreement or is unilateral;

''(ii) a statement whether a prohibition, control, or licensing requirement on a category of items is imposed by the other members of an international agreement or is unilateral;

''(iii) when the answer under either clause (i) or clause (ii) is unilateral, a statement concerning the efforts being made to ensure that the prohibition, control, or licensing requirement is made multilateral; and

''(iv) a statement on what impact, if any, a unilateral prohibition is having, or would have, on preventing the rogue nation or potential adversary from attaining the items in question for military purposes.

''(D) A description of United States policy on sharing satellite imagery that has military significance and a discussion of the criteria for determining the imagery that has that significance.

''(E) A description of the relationship between United States policy on the export of space launch vehicle technology and the Missile Technology Control Regime.

''(F) An assessment of United States efforts to support the inclusion of additional countries in the Missile Technology Control Regime.

''(G) An assessment of the ongoing efforts made by potential participant countries in the Missile Technology Control Regime to meet the guidelines established by the Missile Technology Control Regime.

''(H) A discussion of the history of the space launch vehicle programs of other countries, including a discussion of the military origins and purposes of such programs and the current level of military involvement in such programs.

''(3) The President shall submit the report in unclassified form, but may include a classified annex.

''(4) The committees referred to in paragraph (1) are the following:

''(A) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

''(B) The Committee on National Security [now Committee on Armed Services] and the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives.

''(5) For purposes of this subsection, the term 'Missile Technology Control Regime' means the policy statement announced on April 16, 1987, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan to restrict sensitive missile-relevant transfers based on the Missile Technology Control Regime Annex, and any amendment thereto.''

Department of Defense Review of Export Licenses for Certain Biological Pathogens

Pub. L. 104–106, div. A, title XIII, §1323, Feb. 10, 1996, 110 Stat. 480, provided that:

''(a) Department of Defense Review.—Any application to the Secretary of Commerce for a license for the export of a class 2, class 3, or class 4 biological pathogen to a country identified to the Secretary under subsection (c) as a country that is known or suspected to have a biological weapons program shall be referred to the Secretary of Defense for review. The Secretary of Defense shall notify the Secretary of Commerce within 15 days after receipt of an application under the preceding sentence whether the export of such biological pathogen pursuant to the license would be contrary to the national security interests of the United States.

''(b) Denial of License if Contrary to National Security Interest.—A license described in subsection (a) shall be denied by the Secretary of Commerce if it is determined that the export of such biological pathogen to that country would be contrary to the national security interests of the United States.

''(c) Identification of Countries Known or Suspected To Have a Program To Develop Offensive Biological Weapons.—(1) The Secretary of Defense shall determine, for the purposes of this section, those countries that are known or suspected to have a program to develop offensive biological weapons. Upon making such determination, the Secretary shall provide to the Secretary of Commerce a list of those countries.

''(2) The Secretary of Defense shall update the list under paragraph (1) on a regular basis. Whenever a country is added to or deleted from such list, the Secretary shall notify the Secretary of Commerce.

''(3) Determination under this subsection of countries that are known or suspected to have a program to develop offensive biological weapons shall be made in consultation with the Secretary of State and the intelligence community.

''(d) Definition.—For purposes of this section, the term 'class 2, class 3, or class 4 biological pathogen' means any biological pathogen that is characterized by the Centers for Disease Control as a class 2, class 3, or class 4 biological pathogen.''

Annual Reports on Improving Export Control Mechanisms

Pub. L. 104–106, div. A, title XIII, §1324(a), (b), Feb. 10, 1996, 110 Stat. 480, 481, provided that:

''(a) Joint Reports by Secretaries of State and Commerce.—Not later than April 1 of each of 1996 and 1997, the Secretary of State and the Secretary of Commerce shall submit to Congress a joint report, prepared in consultation with the Secretary of Defense, relating to United States export-control mechanisms. Each such report shall set forth measures to be taken to strengthen United States export-control mechanisms, including—

''(1) steps being taken by each Secretary (A) to share on a regular basis the export licensing watchlist of that Secretary's department with the other Secretary, and (B) to incorporate the export licensing watchlist data received from the other Secretary into the watchlist of that Secretary's department;

''(2) steps being taken by each Secretary to incorporate into the watchlist of that Secretary's department similar data from systems maintained by the Department of Defense and the United States Customs Service; and

''(3) a description of such further measures to be taken to strengthen United States export-control mechanisms as the Secretaries consider to be appropriate.

''(b) Reports by Inspectors General.—(1) Not later than April 1 of each of 1996 and 1997, the Inspector General of the Department of State and the Inspector General of the Department of Commerce shall each submit to Congress a report providing that official's evaluation of the effectiveness during the preceding year of the export licensing watchlist screening process of that official's department. The reports shall be submitted in both a classified and unclassified version.

''(2) Each report of an Inspector General under paragraph (1) shall (with respect to that official's department)—

''(A) set forth the number of export licenses granted to parties on the export licensing watchlist;

''(B) set forth the number of end-use checks performed with respect to export licenses granted to parties on the export licensing watchlist the previous year;

''(C) assess the screening process used in granting an export license when an applicant is on the export licensing watchlist; and

''(D) assess the extent to which the export licensing watchlist contains all relevant information and parties required by statute or regulation.''

STUDY ON NATIONAL SECURITY EXPORT CONTROLS

Section 2433 of Pub. L. 100–418 directed Secretary of Commerce and Secretary of Defense, not later than 60 days after Aug. 23, 1988, to enter into appropriate arrangements with National Academy of Sciences and National Academy of Engineering to conduct a comprehensive study of adequacy of current export administration system in safeguarding United States national security while maintaining United States international competitiveness and Western technological preeminence, further directed Academies to prepare and submit to President and Congress, not later than 18 months after entering into such arrangements, a report containing a detailed statement of findings and conclusions of Academies pursuant to such study, together with their recommendations for such legislative or regulatory reforms as they considered appropriate, and further provided for an Advisory Panel to aid in such study, as well as executive branch cooperation, and appropriations for such study.

DELEGATION OF AUTHORITY UNDER SECTION 1322(c) OF PUBLIC LAW 104–106

Determination of President of the United States, No. 97–39, Sept. 30, 1997, 62 F.R. 52477, provided:

By the authority vested in me by the Constitution and laws of the United States of America, I hereby delegate to the Secretary of Defense the duties and responsibilities vested in the President by section 1322(c) of the National Defense Authorization Act for Fiscal Year 1996 (''the Act'') (Public Law 104–106, 110 Stat. 478–479 (1996)) [set out as a note above].

The reporting requirement delegated by this memorandum may be redelegated not lower than the Under Secretary level. The Department of Defense shall obtain concurrence on the report from the following agencies: the Department of Commerce, the Department of State, the Department of the Treasury, and the Director of Central Intelligence on behalf of the intelligence community prior to submission to the Congress.

Any reference in this memorandum to the provisions of any Act shall be deemed to be a reference to such Act or its provisions as may be amended from time to time.

The Secretary of Defense is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 2405. Foreign policy controls

(a) Authority

(1) In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act [section 2402(2)(B), (7), (8), or (13) of this Appendix], the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity.

(3) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (f). Any such extension and any subsequent extension shall not be for a period of more than one year.

(4) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(5) In accordance with the provisions of section 10 of this Act [section 2409 of this Appendix], the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

(6) Before imposing, expanding, or extending export controls under this section on exports to a country which can use goods, technology, or information available from foreign sources and so incur little or no economic costs as a result of the controls, the President should, through diplomatic means, employ alternatives to export controls which offer opportunities of distinguishing the United States from, and expressing the displeasure of the United States with, the specific actions of that country in response to which the controls are proposed. Such alternatives include private discussions with foreign leaders, public statements in situations where private diplomacy is unavailable or not effective, withdrawal of ambassadors, and reduction of the size of the diplomatic staff that the country involved is permitted to have in the United States.

(b) Criteria

(1) Subject to paragraph (2) of this subsection, the President may impose, extend, or expand export controls under this section only if the President determines that—

(A) such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that foreign policy purpose cannot be achieved through negotiations or other alternative means;

(B) the proposed controls are compatible with the foreign policy objectives of the

United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

(C) the reaction of other countries to the imposition, extension, or expansion of such export controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to United States foreign policy interests;

(D) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

(E) the United States has the ability to enforce the proposed controls effectively.

(2) With respect to those export controls in effect under this section on the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985], the President, in determining whether to extend those controls, as required by subsection (a)(3) of this section, shall consider the criteria set forth in paragraph (1) of this subsection and shall consider the foreign policy consequences of modifying the export controls.

(c) Consultation with industry

The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 [19 U.S.C. 2155] before imposing any export control under this section. Such consultation and advice shall be with respect to the criteria set forth in subsection (b)(1) and such other matters as the Secretary considers appropriate.

(d) Consultation with other countries

When imposing export controls under this section, the President shall, at the earliest appropriate opportunity, consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate, with respect to the criteria set forth in subsection (b)(1) and such other matters as the President considers appropriate.

(e) Alternative means

Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

(f) Consultation with Congress

(1) The President may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The President may not impose, expand, or extend export controls under this section until the President has submitted to the Congress a report—

(A) specifying the purpose of the controls;

(B) specifying the determinations of the President (or, in the case of those export controls described in subsection (b)(2), the considerations of the President) with respect to each of the criteria set forth in subsection (b)(1), the bases for such determinations (or considerations), and any possible adverse foreign policy consequences of the controls;

(C) describing the nature, the subjects, and the results of, or the plans for, the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);

(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and

(E) describing the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations.

(3) To the extent necessary to further the effectiveness of the export controls, portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act [section 2411(c) of this Appendix].

(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3)(A) of this Act [section 2406(g)(3)(A) of this Appendix].

(5) In addition to any written report required under this section, the Secretary, not less frequently than annually, shall present in oral testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on policies and actions taken by the Government to carry out the provisions of this section.

(g) Exclusion for medicine and medical supplies and for certain food exports

This section does not authorize export controls on medicine or medical supplies. This section also does not authorize export controls on donations of goods (including, but not limited to, food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies) that are intended to meet basic human needs. Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall

notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Administrator of the Agency for International Development in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Administrator with respect to developing countries, shall determine whether the proposed export controls on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interests of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Administrator of the Agency for International Development, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. This subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food under the International Emergency Economic Powers Act [50 U.S.C 1701 et seq.]. This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations, which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985]. Notwithstanding the preceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of section 3 of this Act [section 2402(13) of this Appendix].

(h) Foreign availability

(1) In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

(2) Before extending any export control pursuant to subsection (a)(3) of this section, the President shall evaluate the results of his actions under paragraph (1) of this subsection and shall include the results of that evaluation in his report to the Congress pursuant to subsection (f) of this section.

(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6 months after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985] in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign availability of the goods or technology subject to the export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside the United States to countries subject to the export controls so that denial of an export license would be ineffective in achieving the purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all requirements for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (*l*) of this section if the Secretary determines that such action is appropriate.

(4) In making a determination of foreign availability under paragraph (3) of this subsection, the Secretary shall follow the procedures set forth in section 5(f)(3) of this Act [section 2404(f)(3) of this Appendix].

(i) International obligations

The provisions of subsections (b), (c), (d), (e), (g), and (h) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

(j) Countries supporting international terrorism

(1) A validated license shall be required for the export of goods or technology to a country if the Secretary of State has made the following determinations:

(A) The government of such country has repeatedly provided support for acts of international terrorism.

(B) The export of such goods or technology could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

(2) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any validated license required by paragraph (1).

(3) Each determination of the Secretary of State under paragraph (1)(A), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989 [Dec. 12, 1989], shall be published in the Federal Register.

(4) A determination made by the Secretary of State under paragraph (1)(A) may not be re-

scinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate—

(A) before the proposed rescission would take effect, a report certifying that—

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(5)(A) As used in paragraph (1), the term ''repeatedly provided support for acts of international terrorism'' shall include the recurring use of any part of the territory of the country as a sanctuary for terrorists or terrorist organizations.

(B) In this paragraph—

(i) the term ''territory of a country'' means the land, waters, and airspace of the country; and

(ii) the term ''sanctuary'' means an area in the territory of a country—

(I) that is used by a terrorist or terrorist organization—

(aa) to carry out terrorist activities, including training, financing, and recruitment; or

(bb) as a transit point; and

(II) the government of which expressly consents to, or with knowledge, allows, tolerates, or disregards such use of its territory.

(6) The Secretary and the Secretary of State shall include in the notification required by paragraph (2)—

(A) a detailed description of the goods or services to be offered, including a brief description of the capabilities of any article for which a license to export is sought;

(B) the reasons why the foreign country or international organization to which the export or transfer is proposed to be made needs the goods or services which are the subject of such export or transfer and a description of the manner in which such country or organization intends to use such articles, services, or design and construction services;

(C) the reasons why the proposed export or transfer is in the national interest of the United States;

(D) an analysis of the impact of the proposed export or transfer on the military capabilities of the foreign country or international organization to which such export or transfer would be made;

(E) an analysis of the manner in which the proposed export would affect the relative military strengths of countries in the region to which the goods or services which are the subject of such export would be delivered and whether other countries in the region have comparable kinds and amounts of articles, services, or design and construction services; and

(F) an analysis of the impact of the proposed export or transfer on the United States relations with the countries in the region to which the goods or services which are the subject of such export would be delivered.

(k) Negotiations with other countries

(1) Countries participating in certain agreements

The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with those countries participating in the groups known as the Coordinating Committee, the Missile Technology Control Regime, the Australia Group, and the Nuclear Suppliers' Group, regarding their cooperation in restricting the export of goods and technology in order to carry out—

(A) the policy set forth in section 3(2)(B) of this Act [section 2402(2)(B) of this Appendix], and

(B) United States policy opposing the proliferation of chemical, biological, nuclear, and other weapons and their delivery systems, and effectively restricting the export of dual use components of such weapons and their delivery systems, in accordance with this subsection and subsections (a) and (*l*).

Such negotiations shall cover, among other issues, which goods and technology should be subject to multilaterally agreed export restrictions, and the implementation of the restrictions consistent with the principles identified in section 5(b)(2)(C) of this Act [section 2404(b)(2)(C) of this Appendix].

(2) Other countries

The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with countries and groups of countries not referred to in paragraph (1) regarding their cooperation in restricting the export of goods and technology consistent with purposes set forth in paragraph (1). In cases where such negotiations produce agreements on export restrictions that the Secretary, in consultation with the Secretary of State and the Secretary of Defense, determines to be consistent with the principles identified in section 5(b)(2)(C) of this Act [section 2404(b)(2)(C) of this Appendix], the Secretary may treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports are treated to countries that are MTCR adherents.

(3) Review of determinations

The Secretary shall annually review any determination under paragraph (2) with respect

to a country. For each such country which the Secretary determines is not meeting the requirements of an effective export control system in accordance with section 5(b)(2)(C) [section 2404(b)(2)(C) of this Appendix], the Secretary shall restrict or eliminate any preferential licensing treatment for exports to that country provided under this subsection.

(*l*) Missile technology

(1) Determination of controlled items

The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies—

(A) shall establish and maintain, as part of the control list established under this section, a list of all dual use goods and technology on the MTCR Annex; and

(B) may include, as part of the control list established under this section, goods and technology that would provide a direct and immediate impact on the development of missile delivery systems and are not included in the MTCR Annex but which the United States is proposing to the other MTCR adherents to have included in the MTCR Annex.

(2) Requirement of individual validated licenses

The Secretary shall require an individual validated license for—

(A) any export of goods or technology on the list established under paragraph (1) to any country; and

(B) any export of goods or technology that the exporter knows is destined for a project or facility for the design, development, or manufacture of a missile in a country that is not an MTCR adherent.

(3) Policy of denial of licenses

(A) Licenses under paragraph (2) should in general be denied if the ultimate consignee of the goods or technology is a facility in a country that is not an adherent to the Missile Technology Control Regime and the facility is designed to develop or build missiles.

(B) Licenses under paragraph (2) shall be denied if the ultimate consignee of the goods or technology is a facility in a country the government of which has been determined under subsection (j) to have repeatedly provided support for acts of international terrorism.

(4) Consultation with other departments

(A) A determination of the Secretary to approve an export license under paragraph (2) for the export of goods or technology to a country of concern regarding missile proliferation may be made only after consultation with the Secretary of Defense and the Secretary of State for a period of 20 days. The countries of concern referred to in the preceding sentence shall be maintained on a classified list by the Secretary of State, in consultation with the Secretary and the Secretary of Defense.

(B) Should the Secretary of Defense disagree with the determination of the Secretary to approve an export license to which subparagraph (A) applies, the Secretary of Defense shall so notify the Secretary within the 20 days provided for consultation on the determination. The Secretary of Defense shall at the same time submit the matter to the President for resolution of the dispute. The Secretary shall also submit the Secretary's recommendation to the President on the license application.

(C) The President shall approve or disapprove the export license application within 20 days after receiving the submission of the Secretary of Defense under subparagraph (B).

(D) Should the Secretary of Defense fail to notify the Secretary within the time period prescribed in subparagraph (B), the Secretary may approve the license application without awaiting the notification by the Secretary of Defense. Should the President fail to notify the Secretary of his decision on the export license application within the time period prescribed in subparagraph (C), the Secretary may approve the license application without awaiting the President's decision on the license application.

(E) Within 10 days after an export license is issued under this subsection, the Secretary shall provide to the Secretary of Defense and the Secretary of State the license application and accompanying documents issued to the applicant, to the extent that the relevant Secretary indicates the need to receive such application and documents.

(5) Information sharing

The Secretary shall establish a procedure for information sharing with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence, and other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

(m) Chemical and biological weapons

(1) Establishment of list

The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons, the licensing of which would be effective in barring acquisition or enhancement of such capability.

(2) Requirement for validated licenses

The Secretary shall require a validated license for any export of goods or technology on the list established under paragraph (1) to any country of concern.

(3) Countries of concern

For purposes of paragraph (2), the term ''country of concern'' means any country other than—

(A) a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of goods or technology on the list established under paragraph (1); and

(B) such other countries as the Secretary of State, in consultation with the Secretary and the Secretary of Defense, shall designate consistent with the purposes of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 [22 U.S.C. 5601 et seq.].

(n) Crime control instruments

(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. Notwithstanding any other provision of this Act [sections 2401 to 2420 of this Appendix]—

(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (*l*)[1] of this section as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State, and

(B) any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act [section 2409(e) of this Appendix],

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961 [22 U.S.C. 2304].

(*o*) Control list

The Secretary shall establish and maintain, as part of the control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

(p) Effect on existing contracts and licenses

The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information—

(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the export or reexport of such goods, technology, or other information, or

(2) under a validated license or other authorization issued under this Act [sections 2401 to 2420 of this Appendix],

unless and until the President determines and certifies to the Congress that—

(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

(B) the prohibition or curtailment of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

(C) the export controls will continue only so long as the direct threat persists.

(q) Extension of certain controls

Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection [July 12, 1985], and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

(r) Expanded authority to impose controls

(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m)[2] of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

(2) For purposes of this subsection, the term ''joint resolution'' means a joint resolution the

[1] See References in Text note below.

[2] See References in Text note below.

matter after the resolving clause of which is as follows: ''That the Congress, having received on a determination of the President under section 6(*o*)(1)[2] of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.'', with the date of the receipt of the determination and report inserted in the blank.

(3) In the computation of the periods of 30 days referred to in paragraph (1), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(s) Spare parts

(1) At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts for parts in goods subject to such export controls.

(2) With respect to export controls imposed under this section before the date of the enactment of this subsection [Aug. 23, 1988], an individual validated export license shall not be required for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.

(Pub. L. 96–72, §6, Sept. 29, 1979, 93 Stat. 513; Pub. L. 96–533, title I, §111, Dec. 16, 1980, 94 Stat. 3138; Pub. L. 97–145, §6, Dec. 29, 1981, 95 Stat. 1728; Pub. L. 99–64, title I, §108(a)–(g)(1), (h)–(j)(1), (k), (*l*)(1), July 12, 1985, 99 Stat. 131–136; Pub. L. 99–399, title V, §509(b), Aug. 27, 1986, 100 Stat. 874; Pub. L. 100–418, title II, §2423, Aug. 23, 1988, 102 Stat. 1358; Pub. L. 101–222, §4, Dec. 12, 1989, 103 Stat. 1897; Pub. L. 101–510, div. A, title XVII, §1702(a), Nov. 5, 1990, 104 Stat. 1739; Pub. L. 102–138, title V, §504(b), Oct. 28, 1991, 105 Stat. 724; Pub. L. 102–182, title III, §§304(b), 309(a), Dec. 4, 1991, 105 Stat. 1246, 1258; Pub. L. 103–236, title VII, §736, Apr. 30, 1994, 108 Stat. 506; Pub. L. 104–316, title I, §128(c), Oct. 19, 1996, 110 Stat. 3841; Pub. L. 105–277, div. G, title XIV, §1422(b)(7), Oct. 21, 1998, 112 Stat. 2681–793; Pub. L. 108–458, title VII, §7102(c)(1), Dec. 17, 2004, 118 Stat. 3776.)

REFERENCES IN TEXT

The International Emergency Economic Powers Act, referred to in subsec. (g), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, referred to in subsec. (m)(3)(B), is title III of Pub. L. 102–182, Dec. 4, 1991, 105 Stat. 1245, which is classified principally to chapter 65 (§5601 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of Title 22 and Tables.

Subsections (*l*) and (m) of this section, referred to in subsecs. (n)(1)(A) and (r)(1), were successively redesignated as subsections (n) and (*o*), respectively, of this section by Pub. L. 101–510, div. A, title XVII, §1702(a)(1), Nov. 5, 1990, 104 Stat. 1739, then as subsections (*o*) and (p), respectively, of this section by Pub. L. 102–182, title III, §304(b), Dec. 4, 1991, 105 Stat. 1246, without corresponding amendments to such references.

Section 6(*o*)(1) of the Export Administration Act of 1979, referred to in subsec. (r)(2), which was classified to subsec. (*o*)(1) of this section, was redesignated successively as section 6(q)(1) by Pub. L. 101–510, div. A, title XVII, §1702(a)(1), Nov. 5, 1990, 104 Stat. 1739, then as section 6(r)(1) by Pub. L. 102–182, title III, §304(b), Dec. 4, 1991, 105 Stat. 1246, without a corresponding amendment to such reference.

PRIOR PROVISIONS

A prior section 2405, Pub. L. 91–184, §6, Dec. 30, 1969, 83 Stat. 844; Pub. L. 95–52, title I, §§103(d), 112, title II, §203(a), June 22, 1977, 91 Stat. 237, 240, 247; Pub. L. 95–223, title III, §301(b)(2), Dec. 28, 1977, 91 Stat. 1629, setting forth provisions respecting violations and penalties, expired on Sept. 30, 1979.

AMENDMENTS

2004—Subsec. (j)(5), (6). Pub. L. 108–458 added par. (5) and redesignated former par. (5) as (6).

1998—Subsec. (g). Pub. L. 105–277, which directed amendment of ''Section 2405(g) of the Export Administration Act of 1979'' by substituting ''Administrator of the Agency for International Development'' for ''Director of the United States International Development Cooperation Agency'' in two places and substituting ''Administrator'' for ''Director'' in the fourth sentence, was executed to subsec. (g) of this section, which is section 6 of the Export Administration Act of 1979, to reflect the probable intent of Congress.

1996—Subsec. (f)(3). Pub. L. 104–316 struck out after first sentence ''Each such report shall, at the same time it is submitted to the Congress, also be submitted to the General Accounting Office for the purpose of assessing the report's full compliance with the intent of this subsection.''

1994—Subsec. (j)(5). Pub. L. 103–236 added par. (5).

1991—Subsecs. (m) to (s). Pub. L. 102–182, §304(b), added subsec. (m) and redesignated former subsecs. (m) to (r) as (n) to (s), respectively.

Pub. L. 102–138, which made an amendment similar to that made by Pub. L. 102–182, §304(b), by adding a subsec. (m) and redesignating former subsecs. (m) to (r) as (n) to (s), respectively, was repealed by Pub. L. 102–182, §309(a).

1990—Subsecs. (k) to (r). Pub. L. 101–510 added subsecs. (k) and (*l*) and redesignated former subsecs. (k) to (p) as (m) to (r), respectively.

1989—Subsec. (j). Pub. L. 101–222 amended subsec. (j) generally, substituting pars. (1) to (4) for former pars. (1) and (2).

1988—Subsec. (a)(6). Pub. L. 100–418, §2423(a), added par. (6).

Subsec. (p). Pub. L. 100–418, §2423(b), added subsec. (p).

1986—Subsec. (j)(1). Pub. L. 99–399 substituted ''$1,000,000'' for ''$7,000,000''.

1985—Subsec. (a)(1). Pub. L. 99–64, §108(a)(1), substituted ''(8), or (13)'' for ''or (8)'', and inserted '', the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative,'' after ''in consultation with the Secretary of State''.

Subsec. (a)(2). Pub. L. 99–64, §108(a)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 99–64, §108(a)(2), (4), redesignated par. (2) as (3) and substituted ''subsections (b) and (f)'' for ''subsections (b) and (e)''. Former par. (3) redesignated (4).

Subsec. (a)(4), (5). Pub. L. 99–64, §108(a)(2), redesignated pars. (3) and (4) as (4) and (5), respectively.

Subsec. (b). Pub. L. 99–64, §108(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''When imposing, expanding, or extending export controls under this section, the President shall consider—

''(1) the probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

''(2) the compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

''(3) the reaction of other countries to the imposition or expansion of such export controls by the United States;

''(4) the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;

''(5) the ability of the United States to enforce the proposed controls effectively; and

''(6) the foreign policy consequences of not imposing controls.''

Subsec. (c). Pub. L. 99–64, §108(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary, before imposing export controls under this section, shall consult with such affected United States industries as the Secretary considers appropriate, with respect to the criteria set forth in paragraphs (1) and (4) of subsection (b) and such other matters as the Secretary considers appropriate.''

Subsec. (d). Pub. L. 99–64, §108(d)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 99–64, §108(d)(1), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 99–64, §108(d)(1), (e), redesignated former subsec. (e) as (f), amended subsec. (f) generally, substituting ''Consultation with Congress'' for ''Notification to Congress'' in heading, and in text making consultation with the Congress mandatory and not merely discretionary before the President imposes, expands, or extends export controls. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 99–64, §108(d)(1), (f), redesignated former subsec. (f) as (g), inserted sentence directing that this section does not authorize export controls on donations of goods that are intended to meet basic human needs, and substituted ''This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations, which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985'' for ''This subsection shall not apply to any export control on medicine or medical supplies which is in effect on the effective date of this Act or to any export control on food which is in effect on the date of the enactment of the Export Administration Amendments Act of 1981'' and inserted: ''Notwithstanding the preceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of section 3 of this Act.''

Subsec. (h). Pub. L. 99–64, §108(g)(1), designated existing provisions as par. (1) and added pars. (2) to (4).

Pub. L. 99–64, §108(d)(1), redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 99–64, §108(d)(1), (h), redesignated former subsec. (h) as (i) and substituted ''(e), (g), and (h)'' for ''(f), and (g)''. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 99–64, §108(d)(1), (i), redesignated former subsec. (i) as (j), amended subsec. (j) generally, designating the existing sentence as par. (1) and former pars. (1) and (2) thereof as subpars. (A) and (B), and adding par. (2). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 99–64, §108(d)(1), redesignated former subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (k)(1). Pub. L. 99–64, §108(j)(1), inserted sentence relating to the concurrence of the Secretary of State.

Subsec. (*l*). Pub. L. 99–64, §108(d)(1), (k), redesignated former subsec. (k) as (*l*), substituted reference to ''the control list'' for existing reference to ''the commodity control list' after ''The Secretary shall establish and maintain, as part of'', and substituted ''The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section'' for ''Such goods or technology shall be clearly identified as subject to controls under this section''.

Subsecs. (m) to (*o*). Pub. L. 99–64, §108(*l*)(1), added subsecs. (m) to (*o*).

1981—Subsec. (f). Pub. L. 97–145 inserted provisions restricting the imposition of export controls on food when such controls would result in measurable malnutrition, unless the President determines that the controls are necessary to protect the United States national security interests or that the food would not reach persons most in need.

1980—Pub. L. 96–533 required notification of certain commercial exports to be given to the Committee on Foreign Relations of the Senate and prescribed that notice be given to the committees at least 30 days before approval of the export license.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States International Development Cooperation Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1401 of Pub. L. 105–277, set out as an Effective Date note under section 6561 of Title 22.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 108(g)(2) of Pub. L. 99–64 provided that: ''The amendments made by paragraph (1) of this subsection [amending this section] shall not apply to export controls in effect under subsection (i), (j), or (k) of section 6 of the Export Administration Act of 1979 [subsec. (i), (j), or (k) of this section] (as redesignated by subsection (d) of this section) immediately before the date of the enactment of this Act [July 12, 1985], or to export controls made effective by subsection (i)(2) of this section [there is no section 108(i)(2) of Pub. L. 99–64] or by section 6(n) of the Export Administration Act of 1979 [subsec. (n) of this section] (as added by subsection (*l*)(1) of this section).''

Section 108(j)(2) of Pub. L. 99–64 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall apply to determinations of the Secretary of Commerce which are made on or after the date of the enactment of this Act [July 12, 1985].''

Section 108(*l*)(2) of Pub. L. 99–64 provided that: ''Subsections (m) and (*o*) of section 6 of the Export Administration Act of 1979 [subsecs. (m) and (*o*) of this section], as added by paragraph (1) of this subsection, shall not apply to export controls in effect immediately before the date of the enactment of this Act [July 12, 1985], or to export controls made effective by subsection (i)(2) of this section [there is no section 108(i)(2) of Pub. L.

99–64] or by section 6(n) of the Export Administration Act of 1979 [subsec. (n) of this section] (as added by paragraph (1) of this subsection).''

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108–458, title VII, §7102(c)(2), Dec. 17, 2004, 118 Stat. 3777, provided that: ''Nothing in this subsection [amending this section and enacting provisions set out as a note under this section] or the amendments made by this subsection shall be construed as affecting any determination made by the Secretary of State pursuant to section 6(j) of the Export Administration Act of 1979 [50 U.S.C. App. 2405(j)] with respect to a country prior to the date of enactment of this Act [Dec. 17, 2004].''

DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under 2403 of this Appendix, with exception of functions conferred upon President under subsec. (g) of this section which were delegated to Secretary of State and functions conferred upon President under subsec. (k) of this section which were reserved to President.

IMPLEMENTATION

Pub. L. 108–458, title VII, §7102(c)(3), Dec. 17, 2004, 118 Stat. 3777, provided that: ''The President shall implement the amendments made by paragraph (1) [amending this section] by exercising the authorities of the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).''

EXERCISE OF STATUTORY AUTHORITIES RESPECTING IMPOSITION OF TOTAL EMBARGO IN EVENT OF SOVIET OR WARSAW PACT MILITARY ACTION IN POLAND

Section 7 of Pub. L. 97–145 provided that: ''Notwithstanding any other provision of law, no provision of the Export Administration Act of 1979, as amended by this Act [sections 2401 to 2420 of this Appendix], or of any other Act shall be construed to prohibit the exercise of authorities contained in the Export Administration Act of 1979 to impose a total embargo in the event of Soviet or Warsaw Pact military action against Poland.''

ADMINISTRATION OF EXPORT CONTROLS ON ENCRYPTION PRODUCTS

For provision that subsec. (h)(2) to (4) of this section is not applicable with respect to export controls on encryption products, see Ex. Ord. No. 13026, §1(a), set out as a note under section 2403 of this Appendix.

§ 2406. Short supply controls

(a) Authority

(1) In order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) Monitoring

(1) In order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812[1] of the Agricultural Act of 1970 [7 U.S.C. 612c–3]) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(c) Petitions for monitoring or controls

(1)(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials capable of

[1] See References in Text note below.

being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to any such material, in order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix].

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating that each of the criteria set forth in paragraph (3)(A) of this subsection is satisfied.

(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall—

(A) include the name of the material that is the subject of the petition,

(B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States,

(C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and

(D) provide that interested persons shall have a period of 30 days beginning on the date of publication of such notice to submit to the Secretary written data, views or arguments, with or without opportunity for oral presentation, with respect to the matter involved.

At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material that is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

(3)(A) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall determine whether to impose monitoring or controls, or both, on the export of the material that is the subject of the petition, in order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix]. In making such determination, the Secretary shall determine whether—

(i) there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand;

(ii) there has been a significant increase in the domestic price of such material or a domestic shortage of such material relative to demand;

(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

(v) monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix].

(B) The Secretary shall publish in the Federal Register a detailed statement of the reasons for the Secretary's determination pursuant to subparagraph (A) of whether to impose monitoring or controls, or both, including the findings of fact in support of that determination.

(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days after the publication of such proposed regulations, and after considering any public comments on the proposed regulations, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses to such petitions, which involve the same or related materials.

(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after the consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) The Secretary may impose monitoring or controls, on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material but before the Secretary makes a determination under paragraph (3) with respect to that material only if—

(A) the failure to take such temporary action would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, and

(B) the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix].

(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act [sections 2401 to 2420 of this Appendix], except that if the Secretary determines, on the Secretary's own initiative, to impose monitoring or controls, or both, on the export of metallic materials capable of being recycled, under the authority of this section, the Secretary shall publish the reasons for such action in accordance with paragraph (3)(A) and (B) of this subsection.

(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act [sections 2401 to 2420 of this Appendix], or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) Domestically produced crude oil

(1) Notwithstanding any other provision of this Act [sections 2401 to 2420 of this Appendix] and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106[1] of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act [sections 2401 to 2420 of this Appendix]; and

(B) the President includes such findings in his recommendation to the Congress and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920 [30 U.S.C. 185(u)], the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(e) Refined petroleum products

(1) In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

(4) For purposes of this subsection, ''refined petroleum product'' means gasoline, kerosene,

distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

(5) The Secretary may extend any time period prescribed in section 10 of this Act [section 2409 of this Appendix] to the extent necessary to take into account delays in action by the Secretary on a license application on account of the provisions of this subsection.

(f) Certain petroleum products

Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

(g) Agricultural commodities

(1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act [section 2402(2)(A) or (B) of this Appendix]. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix] subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

(3)(A) If the President imposes export controls on any agricultural commodity in order to carry out the policy set forth in paragraph (2)(B), (2)(C), (7), or (8) of section 3 of this Act [section 2402(2)(B), (2)(C), (7), or (8) of this Appendix], the President shall immediately transmit a report on such action to the Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If the Congress, within 60 days after the date of its receipt of the report, adopts a joint resolution pursuant to paragraph (4) approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If the Congress, within 60 days after the date of its receipt of such report, fails to adopt a joint resolution approving such controls, then such controls shall cease to be effective upon the expiration of that 60-day period.

(B) The provisions of subparagraph (A) and paragraph (4) shall not apply to export controls—

(i) which are extended under this Act [sections 2401 to 2420 of this Appendix] if the controls, when imposed, were approved by the Congress under subparagraph (A) and paragraph (4); or

(ii) which are imposed with respect to a country as part of the prohibition or curtailment of all exports to that country.

(4)(A) For purposes of this paragraph, the term ''joint resolution'' means only a joint resolution the matter after the resolving clause of which is as follows: ''That, pursuant to section 7(g)(3) of the Export Administration Act of 1979, the President may impose export controls as specified in the report submitted to the Congress on .'', with the blank space being filled with the appropriate date.

(B) On the day on which a report is submitted to the House of Representatives and the Senate under paragraph (3), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(C) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and all joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

(D) If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(E) A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this paragraph, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this paragraph which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(F) In the case of a joint resolution described in subparagraph (A), if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii) the vote on final passage shall be on the joint resolution of the other House.

(5) In the computation of the period of 60 days referred to in paragraph (3) and the period of 30 days referred to in subparagraph (D) of paragraph (4), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(h) Barter agreements

(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix].

(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term ''barter agreement'' means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act [September 30, 1979].

(i) Unprocessed red cedar

(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (Thuja plicata) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act [September 30, 1979] as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs harvested from State or Federal lands may be exported from the United States.

(2) To the maximum extent practicable, the Secretary shall utilize the multiple validated export licenses described in section 4(a)(2) of this Act [section 2403(a)(2) of this Appendix] in lieu of validated licenses for exports under this subsection.

(3) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

(4) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

(5) As used in this subsection, the term ''unprocessed western red cedar'' means red cedar timber which has not been processed into—

(A) lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better;

(B) chips, pulp, and pulp products;

(C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

(j) Effect of controls on existing contracts

The export restrictions contained in subsection (i) of this section and any export controls imposed under this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of

which would make the red cedar available for export. Any export controls imposed under this section on any agricultural commodity (including fats, oils, and animal hides and skins) or on any forest product or fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this subsection, the term ''contract to export'' includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.

(k) Oil exports for use by United States military facilities

For purposes of subsection (d) of this section, and for purposes of any export controls imposed under this Act [sections 2401 to 2420 of this Appendix], shipments of crude oil, refined petroleum products, or partially refined petroleum products from the United States for use by the Department of Defense or United States-supported installations or facilities shall not be considered to be exports.

(Pub. L. 96–72, § 7, Sept. 29, 1979, 93 Stat. 515; Pub. L. 99–64, title I, §§ 109, 110, July 12, 1985, 99 Stat. 137, 139; Pub. L. 100–180, div. A, title XII, § 1246, Dec. 4, 1987, 101 Stat. 1165; Pub. L. 100–418, title II, § 2424(a), Aug. 23, 1988, 102 Stat. 1359; Pub. L. 100–449, title III, § 305(a), Sept. 28, 1988, 102 Stat. 1876.)

REFERENCES IN TEXT

Section 812 of the Agricultural Act of 1970, referred to in subsec. (b)(1), which was classified to section 612c–3 of Title 7, Agriculture, was repealed by Pub. L. 101–624, title XV, § 1578, Nov. 28, 1990, 104 Stat. 3702.

Section 12106 of title 46, referred to in subsec. (d)(1)(C), was omitted, and its provisions restated, in the general amendment of chapter 121 of Title 46, Shipping, by Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1491. See sections 12102, 12112, 12116, 12117, and 12119 of Title 46 and Prior Provisions note under new section 12106 of Title 46.

Section 7(g)(3) of the Export Administration Act of 1979, referred to in subsec. (g)(4)(A), is classified to subsec. (g)(3) of this section.

Section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (g)(4)(E), is section 601(b)(4) of Pub. L. 94–329, June 30, 1976, 90 Stat. 729, which made provision for expedited procedures in the Senate, and is not classified to the Code.

PRIOR PROVISIONS

A prior section 2406, Pub. L. 91–184, § 7, Dec. 30, 1969, 83 Stat. 845; Pub. L. 95–52, title I, §§ 113(a), 114, title II, § 201(c), June 22, 1977, 91 Stat. 241, 246, setting forth enforcement procedures applicable to the Export Administration Act of 1969, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (d)(1). Pub. L. 100–449 struck out ''or'' before ''(B)'' and inserted '', or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code'' after ''reenters the United States''.

Subsec. (d)(4). Pub. L. 100–418 struck out par. (4) which provided that notwithstanding section 2419 of this Appendix, the provisions of this subsection expire Sept. 30, 1990.

1987—Subsec. (k). Pub. L. 100–180 added subsec. (k).

1985—Subsec. (c). Pub. L. 99–64, § 109, amended subsec. (c) generally to require the Secretary to make and publish certain determinations of private petitions as well as on self-initiated motions before imposing monitoring or controls or both on exports of metallic materials capable of being recycled, to require that each petition filed requesting the imposition of monitoring, controls, or both, on metallic materials capable of being recycled indicate that each of the criteria in par. (3)(A) is satisfied, to require the Secretary to publish certain determinations, including findings of fact in support of the determinations, before deciding whether to impose monitoring, controls, or both on exports of such material, including whether there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand, and whether exports of such material are as important as any other cause of the domestic price increase or shortage relative to demand, to allow the Secretary to impose monitoring, controls, or both, on a temporary basis after a petition is filed if the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of the Act, but before the Secretary makes a determination under par. (3) only if failure to take such temporary action would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, requires that if the Secretary determines, on his initiative, to monitor, control, or both, the export of such material, the Secretary shall publish the reasons for such determination in accordance with par. (3)(A) and (B), requires that exports of material be as important as any other cause of the increased domestic prices or shortage, and sets a standard under which exports need not be the sole or principal cause of the price rise or domestic shortage in order for exports of the material to be controlled or monitored.

Subsec. (d)(1). Pub. L. 99–64, § 110(a)(1), substituted ''subject to paragraph (2) of this subsection'' for ''unless the requirements of paragraph (2) of this subsection are met''.

Subsec. (d)(2)(A). Pub. L. 99–64, § 110(a)(2), substituted ''the President so recommends to the Congress after making and publishing'' for ''the President makes and publishes'' in the provisions preceding cl. (i).

Subsec. (d)(2)(B). Pub. L. 99–64, § 110(a)(3), substituted ''includes such findings in his recommendation'' for ''reports such findings'' and ''after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law'' for ''thereafter, agrees to a concurrent resolution approving such exports on the basis of the findings''.

Subsec. (d)(4). Pub. L. 99–64, § 110(a)(4), added par. (4).

Subsec. (e)(1). Pub. L. 99–64, § 110(b), substituted ''In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C) of this Act, the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no'' for ''No''.

Subsec. (g)(3). Pub. L. 99–64, § 110(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''If the authority conferred by this section or section 6 is exercised to prohibit or curtail the export of any agricultural commodity in order to carry out the policies set forth in subparagraph (B) or (C) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the

adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.''

Subsec. (g)(4), (5). Pub. L. 99–64, §110(d), added pars. (4) and (5).

Subsec. (i)(1). Pub. L. 99–64, §110(c)(1), inserted ''harvested from State or Federal lands'' after ''red cedar logs'' in concluding provision.

Subsec. (i)(2). Pub. L. 99–64, §110(c)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (i)(3), (4). Pub. L. 99–64, §110(c)(2), redesignated former pars. (2) and (3) as (3) and (4), respectively. Former pars. (3) and (4) redesignated (4) and (5), respectively.

Subsec. (i)(5). Pub. L. 99–64, §110(c)(2), redesignated former par. (4) as (5).

Subsec. (i)(5)(A). Pub. L. 99–64, §110(c)(4), amended subpar. (A) generally, substituting ''lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better'' for ''lumber without wane''.

Subsec. (j). Pub. L. 99–64, §110(e), added subsec. (j) and struck out former subsec. (j) which related to the export of horses.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100–449 effective on the date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on the date the Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

REGULATIONS

Section 19(b)(2) of Pub. L. 96–72 provided that: ''Regulations implementing the provisions of section 7(c) of this Act [subsec. (c) of this section] shall be issued and take effect not later than January 1, 1980.''

DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix, with exception of functions conferred upon President under subsec. (d)(2) of this section which were reserved to President.

ADEQUACY OF EXISTING STATUTORY RESTRICTIONS ON EXPORT OF CRUDE OIL PRODUCED IN CONTIGUOUS UNITED STATES IN PROTECTING ENERGY AND NATIONAL SECURITY INTEREST AND AMERICAN CONSUMER; STUDY AND REPORT TO CONGRESSIONAL COMMITTEES

Section 2424(b) of Pub. L. 100–418 directed Secretary of Commerce, in consultation with Secretary of Energy, to submit to Congress not later than 12 months after Aug. 23, 1988, a report containing results of a comprehensive review undertaken to assess whether existing statutory restrictions on export of crude oil produced in contiguous United States were adequate to protect energy and national security interests of United States and American consumers, taking into account such things as adequacy of domestic supplies of crude oil and refined petroleum products in meeting national security as well as consumer needs in the United States generally and on West Coast particularly, and further provided for public hearing and comment on this review as well as consultation with other Federal agencies and committees of Congress.

MONITORING OF WOOD EXPORTS

Section 2432 of Pub. L. 100–418 directed Secretary of Commerce, for a period of 2 years beginning on Aug. 23, 1988, to monitor exports of processed and unprocessed wood to all countries of the Pacific Rim, and to include results of such monitoring in monthly reports to Congress, setting forth, with respect to each item monitored, actual exports, destination by country, and domestic and worldwide price, supply, and demand.

UNPROCESSED RED CEDAR EXEMPT FROM EXPORT REGULATIONS

Pub. L. 98–411, title V, §514, Aug. 30, 1984, 98 Stat. 1575, provided that: ''None of the funds appropriated or made available by this Act [Pub. L. 98–411] may be used to enforce or give effect to any restriction on the export of unprocessed western red cedar harvested from State lands pursuant to a harvesting contract entered into prior to October 1, 1979.''

Pub. L. 96–126, title III, §308, Nov. 27, 1979, 93 Stat. 980, provided that: ''Notwithstanding the provisions of any other law, the State of Alaska is exempted from application of the provisions of section 7(i) of the Export Administration Act of 1979 (Public Law 96–72) [subsec. (i) of this section].''

In making continuing appropriations for fiscal year 1981, Pub. L. 96–536, §§101(*a*), 102, Dec. 16, 1980, 94 Stat. 3169, as amended by Pub. L. 97–12, §401, June 5, 1981, 95 Stat. 95, provided in part for the period Dec. 15, 1980, to Sept. 30, 1981: ''such amounts as may be necessary for programs, projects, and activities provided for in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1981 (H.R. 7584), to the extent and in the manner provided for in such Act as enacted by the Congress.'' H.R. 7584, which was enacted by the Congress and vetoed by the President Dec. 13, 1980, contained a section 610 that read: ''None of the funds appropriated or made available by this Act may be used to enforce or give effect to the quantitative restrictions required to be imposed by subsection 7(i)(1) of the Export Administration Act of 1979 (Public Law 96–72) [subsec. (i)(1) of this section] in any way which would make such restrictions applicable to the export of: (a) up to ninety million board feet (computed without regard to exports or export authorizations made prior to the effective date of this Act) of unprocessed western red cedar harvested from State or Federal lands pursuant to a harvesting contract entered into prior to October 1, 1979, or any extension thereof; or (b) lumber of American Lumber Standards Grades of Number 3 dimensions or better, of Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 Common or better.''. Continuing appropriations for fiscal year 1982 were made, subject to specified provisions and under the authority and conditions provided in the above cited appropriation Act for fiscal 1981, as follows: For the period Oct. 1, 1981, to Dec. 15, 1981, by Pub. L. 97–51, §§101(a)(1), (4), 102, Oct. 1, 1981, 95 Stat. 958, 959, 961, as amended by Pub. L. 97–85, Nov. 23, 1981, 95 Stat. 1098; and for the period Dec. 15, 1981, to Sept. 30, 1982, by Pub. L. 97–92, §§101(h), 102, Dec. 15, 1981, 95 Stat. 1190, 1193, as amended by Pub. L. 97–161, Mar. 31, 1982, 96 Stat. 22.

§ 2407. Foreign boycotts

(a) Prohibitions and exceptions

(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act [section 2402(5)(A) or (B) of this Appendix], the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boy-

cotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) Foreign policy controls

(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act [section 2405 of this Appendix] shall implement the policies set forth in section 3(5) [section 2402(5) of this Appendix].

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) [section 2402(5) of this Appendix] shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act [section 2402(5) of this Appendix].

(c) Preemption

The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

(Pub. L. 96–72, § 8, Sept. 29, 1979, 93 Stat. 521.)

PRIOR PROVISIONS

A prior section 2407, Pub. L. 91–184, § 8, Dec. 30, 1969, 83 Stat. 846; Pub. L. 95–52, title II, § 203(b), June 22, 1977, 91 Stat. 247, relating to exemption from administrative procedure and judicial review provisions, expired on Sept. 30, 1979.

DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix.

§ 2408. Procedures for hardship relief from export controls

(a) Filing of petitions

Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) Decision of Secretary

Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

(c) Factors to be considered

For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account—

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

(Pub. L. 96–72, § 9, Sept. 29, 1979, 93 Stat. 524.)

PRIOR PROVISIONS

A prior section 2408, Pub. L. 91–184, § 9, Dec. 30, 1969, 83 Stat. 846, relating to providing information to exporters, expired on Sept. 30, 1979.

§ 2409. Procedures for processing export license applications; other inquiries

(a) Primary responsibility of Secretary

(1) All export license applications required under this Act [sections 2401 to 2420 of this Appendix] shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

(b) Initial screening

Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

(1) send the applicant an acknowledgment of the receipt of the application and the date of the receipt;

(2) submit to the applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application, and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case if such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, if so, inform the applicant of this requirement.

(c) Action on certain applications

Except as provided in subsection (*o*), in each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within 60 days after a properly completed application has been submitted pursuant to this section.

(d) Referral to other departments and agencies

Except in the case of exports described in subsection (*o*), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 20 days after the submission of a properly completed application—

(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

Notwithstanding the 10-day period set forth in subsection (b), in the case of exports described in subsection (*o*), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, immediately upon receipt of the properly completed application, refer the application to such department or agency for its review. Such review shall be concurrent with that of the Department of Commerce.

(e) Action by other departments and agencies

(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary the information or recommendations requested with respect to the application. The information or recommendations shall be submitted within 20 days after the department or agency receives the application or, in the case of exports described in subsection (*o*), before the expiration of the time periods permitted by that subsection. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

(2)(A) Except in the case of exports described in subsection (*o*), if the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 20-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

(B) In the case of exports described in subsection (*o*), if the head of any such department or agency notifies the Secretary, before the expiration of the 15-day period provided in sub-

section (*o*)(1), that more time is required for review by such department or agency, the Secretary shall notify the applicant, pursuant to subsection (*o*)(1)(C), that additional time is required to consider the application, and such department or agency shall have additional time to consider the application within the limits permitted by subsection (*o*)(2). If such department or agency does not submit its recommendations within the time periods permitted under subsection (*o*), it shall be deemed by the Secretary to have no objection to the approval of such application.

(f) Action by Secretary

(1) Within 60 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 60-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations. The provisions of this paragraph shall not apply in the case of exports described in subsection (*o*).

(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant in writing of the specific questions raised and any such negative considerations or recommendations. Before a final determination with respect to the application is made, the applicant shall be entitled—

(A) to respond in writing to such questions, considerations, or recommendations within 30 days after receipt of such information from the Secretary; and

(B) upon the filing of a written request with the Secretary within 15 days after the receipt of such information, to respond in person to the department or agency raising such questions, considerations, or recommendations.

The provisions of this paragraph shall not apply in the case of exports described in subsection (*o*).

(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of—

(A) the determination,

(B) the statutory basis for the proposed denial,

(C) the policies set forth in section 3 of this Act [section 2402 of this Appendix] which would be furthered by the proposed denial,

(D) what if any modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with export controls imposed under this Act [sections 2401 to 2420 of this Appendix],

(E) which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate,

(F) to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the determination to deny the application, and

(G) the availability of appeal procedures.

The Secretary shall allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after such deferral.

(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor. The provisions of this paragraph shall not apply in the case of exports described in subsection (*o*).

(g) Special procedures for Secretary of Defense

(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 20 days after notification of the request, shall—

(A) recommend to the President and the Secretary that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to

the military potential of such country or any other country;

(B) notify the Secretary that he would recommend approval subject to specified conditions; or

(C) recommend to the Secretary that the export of goods or technology be approved.

Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense. If the President notifies the Secretary, within 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country. If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a license or other authority to export without such recommendation or notification.

(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

(h) Multilateral controls

In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 40 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 40-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every 40-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

(i) Records

The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

(j) Appeal and court action

(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) If, within 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

(k) Changes in requirements for applications

Except as provided in subsection (b)(3) of this section, in any case in which, after a license application is submitted, the Secretary changes the requirements for such a license application, the Secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.

***(l)* Other inquiries**

(1) In any case in which the Secretary receives a written request asking for the proper classification of a good or technology on the control list, the Secretary shall, within 10 working days after receipt of the request, inform the person making the request of the proper classification.

(2) In any case in which the Secretary receives a written request for information about the applicability of export license requirements under

this Act [sections 2401 to 2420 of this Appendix] to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receipt of the request, reply with that information to the person making the request.

(m) Small business assistance

Not later than 120 days after the date of the enactment of this subsection [July 12, 1985], the Secretary shall develop and transmit to the Congress a plan to assist small businesses in the export licensing application process under this Act [sections 2401 to 2420 of this Appendix]. The plan shall include, among other things, arrangements for counseling small businesses on filing applications and identifying goods or technology on the control list, proposals for seminars and conferences to educate small businesses on export controls and licensing procedures, and the preparation of informational brochures. The Secretary shall, not later than 120 days after the date of the enactment of the Export Enhancement Act of 1988 [Aug. 23, 1988], report to the Congress on steps taken to implement the plan developed under this subsection to assist small businesses in the export licensing application process.

(n) Reports on license applications

(1) Not later than 180 days after the date of the enactment of this subsection [July 12, 1985], and not later than the end of each 3-month period thereafter, the Secretary shall submit to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate a report listing—

(A) all applications on which action was completed during the preceding 3-month period and which required a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, before notification of a decision to approve or deny the application was sent to the applicant; and

(B) in a separate section, all applications which have been in process for a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, and upon which final action has not been taken.

(2) With regard to each application, each listing shall identify—

(A) the application case number;

(B) the value of the goods or technology to which the application relates;

(C) the country of destination of the goods or technology;

(D) the date on which the application was received by the Secretary;

(E) the date on which the Secretary approved or denied the application;

(F) the date on which the notification of approval or denial of the application was sent to the applicant; and

(G) the total number of days which elapsed between receipt of the application, in its properly completed form, and the earlier of the last day of the 3-month period to which the report relates, or the date on which notification of approval or denial of the application was sent to the applicant.

(3) With respect to an application which was referred to other departments or agencies, the listing shall also include—

(A) the departments or agencies to which the application was referred;

(B) the date or dates of such referral; and

(C) the date or dates on which recommendations were received from those departments or agencies.

(4) With respect to an application referred to any other department or agency which did not submit or has not submitted its recommendations on the application within the period permitted under subsection (e) of this section to submit such recommendations, the listing shall also include—

(A) the office responsible for processing the application and the position of the officer responsible for the office; and

(B) the period of time that elapsed before the recommendations were submitted or that has elapsed since referral of the application, as the case may be.

(5) Each report shall also provide an introduction which contains—

(A) a summary of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in the applications, grouped according to—

(i) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, as follows: 61 to 75 days, 76 to 90 days, 91 to 105 days, 106 to 120 days, and more than 120 days; and

(ii) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, beyond the period permitted under subsection (c), (f)(1), or (h) of this section for the processing of applications, as follows: not more than 15 days, 16 to 30 days, 31 to 45 days, 46 to 60 days, and more than 60 days; and

(B) a summary by country of destination of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in the applications, on which action was not completed within 60 days.

***(o)* Exports to members of Coordinating Committee**

(1) Fifteen working days after the date of formal filing with the Secretary of an individual validated license application for the export of goods or technology to a country that maintains export controls on such goods or technology pursuant to the agreement of the governments participating in the group known as the Coordinating Committee, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless—

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval;

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied; or

(C) the Secretary requires additional time to consider the application and the applicant has been so informed.

(2) In the event that the Secretary notifies an applicant pursuant to paragraph (1)(C) that more time is required to consider an individual validated license application, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license 30 working days after the date that such license application was formally filed with the Secretary unless—

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval; or

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied.

(3) In reviewing an individual license application subject to this subsection, the Secretary shall evaluate the information set forth in the application and the reliability of the end-user.

(4) Nothing in this subsection shall affect the scope or availability of licenses authorizing multiple exports set forth in section 4(a)(2) of this Act [section 2403(a)(2) of this Appendix].

(5) The provisions of this subsection shall take effect 4 months after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985].

(Pub. L. 96–72, § 10, Sept. 29, 1979, 93 Stat. 525; Pub. L. 99–64, title I, § 111, July 12, 1985, 99 Stat. 142; Pub. L. 100–418, title II, § 2425(a), (c), Aug. 23, 1988, 102 Stat. 1360, 1361.)

PRIOR PROVISIONS

A prior section 2409, Pub. L. 91–184, § 10, Dec. 30, 1969, 83 Stat. 846; Pub. L. 93–500, § 3(b), Oct. 29, 1974, 88 Stat. 1552; Pub. L. 93–608, § 2(1), Jan. 2, 1975, 88 Stat. 1971; Pub. L. 95–52, title I, § 116(a), (b)(2), June 22, 1977, 91 Stat. 241, 242, setting forth requirements respecting semiannual reports to President and Congress, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (g)(2). Pub. L. 100–418, § 2425(a)(1)–(3), substituted ''President and the Secretary'' for ''President'' in subpar. (A), inserted before last sentence ''Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense.'', and inserted at end ''If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a license or other authority to export without such recommendation or notification.''

Subsec. (g)(4). Pub. L. 100–418, § 2425(a)(4), struck out par. (4) which read as follows: ''Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 5 of this Act with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his decision, together with the recommendation of the Secretary of Defense.''

Subsec. (m). Pub. L. 100–418, § 2425(c), inserted sentence at end requiring the Secretary, not later than 120 days after Aug. 23, 1988, to report to Congress on steps taken to implement the plan developed to assist small businesses in the export licensing application process.

1985—Pub. L. 99–64, § 111(e)(1), inserted ''; other inquiries'' in section catchline.

Subsec. (c). Pub. L. 99–94, § 111(a)(2), (b)(1), substituted ''Except as provided in subsection (*o*) of this section, in each case'' for ''In each case'' and ''60'' for ''90''.

Subsec. (d). Pub. L. 99–64, § 111(a)(3), (b)(2), substituted ''Except in the case of exports described in subsection (*o*) of this section, in each case'' for ''In each case'' and ''20'' for ''30'' in provisions preceding par. (1), and inserted flush provision following par. (2) relating to exports described in subsec. (*o*) when it becomes necessary to refer an application to another department or agency for information and recommendations.

Subsec. (e)(1). Pub. L. 99–64, § 111(b)(3)(A), substituted ''Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary the information or recommendations requested with respect to the application'' for ''Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary, within 30 days after its receipt of the application, the information or recommendations requested with respect to such application'' and inserted sentence directing that information or recommendations be submitted within 20 days after the department or agency receives the application or, in the case of exports described in subsection (*o*), before the expiration of the time periods permitted by that subsection.

Subsec. (e)(2)(A). Pub. L. 99–64, § 111(a)(3), (b)(3)(B)(i), designated existing provisions of par. (2) as subpar. (A) and substituted ''Except in the case of exports described in subsection (*o*), if the head'' for ''If the head'' and ''20'' for ''30''.

Subsec. (e)(2)(B). Pub. L. 99–64, § 111(b)(3)(B)(ii), added subpar. (B).

Subsec. (f)(1). Pub. L. 99–64, § 111(a)(2), (b)(4), substituted ''60'' for ''90'' in two places and inserted sentence providing that the provisions of this paragraph shall not apply in the case of exports described in subsection (*o*).

Subsec. (f)(2). Pub. L. 99–64, § 111(c), inserted ''in writing'' after ''inform the applicant'', and substituted provisions describing the steps to which the applicant is entitled before a final determination with respect to the application is made and providing that the provisions of this paragraph shall not apply in the case of exports described in subsection (*o*), for provision that the Secretary accord the applicant an opportunity, before the final determination with respect to the application is made, to respond in writing to such questions, considerations, or recommendations.

Subsec. (f)(3). Pub. L. 99–64, § 111(d), inserted two new sentences describing the content of the writing which the applicant is entitled to receive when the Secretary determines that an application should be denied and directing that the Secretary allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied, and struck out existing sentence which had provided: ''In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in

writing, within 5 days after such determination is made, of the determination, of the statutory basis for denial, the policies set forth in section 3 of the Act [section 2402 of this Appendix] which would be furthered by denial, and, to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the denial, and of the availability of appeal procedures.''

Subsec. (f)(4). Pub. L. 99–64, §111(b)(4), inserted sentence providing that provisions of this paragraph shall not apply in the case of exports described in subsec. (*o*).

Subsec. (g)(2). Pub. L. 99–64, §111(a)(3), substituted ''20'' for ''30'' in provisions preceding subpar. (A) and in provisions following subpar. (C).

Subsec. (h). Pub. L. 99–64, §111(a)(1), substituted ''40'' for ''60'' wherever appearing.

Subsec. (j)(3). Pub. L. 99–64, §111(a)(3), substituted ''20'' for ''30''.

Subsecs. (k) to (*o*). Pub. L. 99–64, §111(e)(2), added subsecs. (k) to (*o*).

REGULATIONS

Section 19(b)(1) of Pub. L. 96–72 provided that: ''Regulations implementing the provisions of section 10 of this Act [this section] shall be issued and take effect not later than July 1, 1980.''

DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix, with exception of functions conferred upon President under subsec. (g) of this section which were reserved to President.

§ 2410. Violations

(a) In general

Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) Willful violations

(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act [sections 2401 to 2420 of this Appendix] for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

(3) Any person who possesses any goods or technology—

(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] or any regulation, order, or license issued with respect to such control, or

(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 [section 2404 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 [section 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix] shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act [sections 2401 to 2420 of this Appendix].

(c) Civil penalties; administrative sanctions

(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 for each violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix], either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act [section 2404 of this Appendix] or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act [22 U.S.C. 2778] may not exceed $100,000.

(2)(A) The authority under this Act [sections 2401 to 2420 of this Appendix] to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix].

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act [sections 2401 to 2420 of this Appendix] for a violation of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix] may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix] shall be made available for public inspection and copying.

(3) An exception may not be made to any order issued under this Act [sections 2401 to 2420 of this Appendix] which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

(d) Payment of penalties

The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(e) Refunds

Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c), or any amounts realized from the forfeiture of any property interest or proceeds pursuant to subsection (g), shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty imposed pursuant to subsection (c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) Actions for recovery of penalties

In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) Forfeiture of property interest and proceeds

(1) Any person who is convicted under subsection (a) or (b) of a violation of an export control imposed under section 5 of this Act [section 2404 of this Appendix] (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

(h) Prior convictions

(1) No person convicted of a violation of this Act [sections 2401 to 2420 of this Appendix] (or any regulation, license, or order issued under this Act [sections 2401 to 2420 of this Appendix]), any regulation, license, or order issued under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.], section 793, 794, or 798 of title 18, United States Code, section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)),[1] or section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act [sections 2401 to 2420 of this Appendix] for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this Act [sections 2401 to 2420 of this Appendix] in which such person has an interest at the time of the conviction.

(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the pro-

[1] See References in Text note below.

cedures set forth in section 13(c) of this Act [section 2412(c) of this Appendix].

(i) Other authorities

Nothing in subsection (c), (d), (f), (g), or (h) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act [sections 2401 to 2420 of this Appendix], or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix];

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act [sections 2401 to 2420 of this Appendix], or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix]; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

(Pub. L. 96–72, §11, Sept. 29, 1979, 93 Stat. 529; Pub. L. 97–145, §4(a)–(c), Dec. 29, 1981, 95 Stat. 1727; Pub. L. 99–64, title I, §112, July 12, 1985, 99 Stat. 146; Pub. L. 100–418, title II, §2426, Aug. 23, 1988, 102 Stat. 1361.)

REFERENCES IN TEXT

The International Emergency Economic Powers Act, referred to in subsec. (h)(1), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

Section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), referred to in subsec. (h)(1), was redesignated as section 4(a) of that Act, 50 U.S.C. 783(a), by Pub. L. 103–199, title VIII, §803(2)(B), Dec. 17, 1993, 107 Stat. 2329.

PRIOR PROVISIONS

A prior section 2410, Pub. L. 91–184, §11, Dec. 30, 1969, 83 Stat. 846; Pub. L. 95–52, title II, §204, June 22, 1977, 91 Stat. 247, defining ''person'' and ''United States person'' for purposes of the Export Administration Act of 1969, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (h). Pub. L. 100–418, §2426, designated existing provisions as par. (1), inserted ''this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act,'' after ''violation of'', and added par. (2).

1985—Subsec. (a). Pub. L. 99–64, §112(a), inserted ''or conspires to or attempts to violate''.

Subsec. (b)(1). Pub. L. 99–64, §112(b)(1), in provisions preceding subpar. (A), substituted ''Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes'' for ''Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes''.

Subsec. (b)(2). Pub. L. 99–64, §112(b)(2), struck out sentence which provided that for purposes of this paragraph, ''controlled country'' means any country described in section 620(f) of the Foreign Assistance Act of 1961.

Subsec. (b)(3) to (5). Pub. L. 99–64, §112(b)(3), added pars. (3) to (5).

Subsec. (c)(1). Pub. L. 99–64, §112(c)(1), substituted ''Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary)'' for ''head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof,''.

Subsec. (c)(3), (4). Pub. L. 99–64, §112((c)(2), added pars. (3) and (4).

Subsec. (e). Pub. L. 99–64, §112(d), inserted '', or any amounts realized from the forfeiture of any property interest or proceeds pursuant to subsection (g),'' after ''Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c)'', and inserted ''imposed pursuant to subsection (c)'' after ''refund any such penalty''.

Subsecs. (g), (h). Pub. L. 99–64, §112(e)(2), added subsecs. (g) and (h). Former subsec. (g) redesignated (i).

Subsec. (i). Pub. L. 99–64, §112(e)(1), (f), redesignated former subsec. (g) as (i) and substituted ''(f), (g), or (h)'' for ''or (f)'' in provisions preceding par. (1).

1981—Subsec. (b)(1). Pub. L. 97–145, §4(a), in penalty provisions, substituted separate penalties for individuals and others in subpars. (A) and (B), for provisions prescribing a fine of not more than five times the value of the exports involved or $100,000, whichever was greater, or imprisonment of not more than 10 years, or both.

Subsec. (b)(2). Pub. L. 97–145, §4(b), in penalty provisions, substituted separate penalties for individuals and others in subpars. (A) and (B), for provisions prescribing a fine of not more than five times the value of the exports involved or $100,000, whichever was greater, or imprisonment for not more than 5 years, or both.

Subsec. (c)(1). Pub. L. 97–145, §3(c), inserted exception that the civil penalty for each violation involving national security controls imposed under section 2404 of this Appendix or controls imposed on the export of defense articles and defense services under section 2778 of title 22 may not exceed $100,000.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 4(d) of Pub. L. 97–145 provided that: ''The amendments made by this section [amending this section] apply with respect to violations occurring after the date of the enactment of this Act [Dec. 29, 1981].''

§ 2410a. Multilateral export control violations

(a) Determination by the President

The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that—

(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabilities in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Security Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after the date of the enact-

ment of the Export Enhancement Act of 1988 [Aug. 23, 1988].

(b) Sanctions

The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, subsidiary, and successor entity of the foreign person, and, except as provided in subsection (c), are as follows:

(1) a prohibition on contracting with, and procurement of products and services from, a sanctioned person, by any department, agency, or instrumentality of the United States Government, and

(2) a prohibition on importation into the United States of all products produced by a sanctioned person.

(c) Exceptions

The President shall not apply sanctions under this section—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(B) if the President determines that the foreign person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

(2) to—

(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before the date on which the President notifies the Congress of the intention to impose the sanctions;

(B) spare parts;

(C) component parts, but not finished products, essential to United States products or production;

(D) routine servicing and maintenance of products; or

(E) information and technology.

(d) Exclusion

The President shall not apply sanctions under this section to a parent, affiliate, subsidiary, and successor entity of a foreign person if the President determines that—

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not knowingly violated the export control regulation violated by the foreign person, and

(2) the government of the country with jurisdiction over the parent, affiliate, subsidiary, or successor entity had in effect, at the time of the violation by the foreign person, an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

(A) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

(B) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

(C) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

(D) a system of export control documentation to verify the movement of goods and technology; and

(E) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

(e) Definitions

For purposes of this section—

(1) the term ''component part'' means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

(2) the term ''finished product'' means any article which is usable for its intended functions without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

(3) the term ''sanctioned person'' means a foreign person, and any parent, affiliate, subsidiary, or successor entity of the foreign person, upon whom sanctions have been imposed under this section.

(f) Subsequent modifications of sanctions

The President may, after consultation with the Congress, limit the scope of sanctions applied to a parent, affiliate, subsidiary, or successor entity of the foreign person determined to have committed the violation on account of which the sanctions were imposed if the President determines that—

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not, on the basis of available evidence, itself violated the export control regulation involved, either directly or through a course of conduct;

(2) the government with jurisdiction over the parent, affiliate, subsidiary, or successor entity has improved its export control system as measured by the criteria set forth in subsection (d)(2);

(3) the parent, affiliate, subsidiary, or successor entity, has instituted improvements in internal controls sufficient to detect and prevent violations of the export control regime implemented under paragraph (2); and

(4) the impact of the sanctions imposed on the parent, affiliate, subsidiary, or successor entity is proportionate to the increased defense expenditures imposed on the United States.

Notwithstanding the preceding sentence, the President may not limit the scope of the sanc-

tion referred to in subsection (b)(1) with respect to the parent of the foreign person determined to have committed the violation, until that sanction has been in effect for at least 2 years.

(g) Reports to Congress

The President shall include in the annual report submitted under section 14 [section 2413 of this Appendix], a report on the status of any sanctions imposed under this section, including any exceptions, exclusions, or modifications of sanctions that have been applied under subsection (c), (d), or (f).

(h) Discretionary imposition of sanctions

If the President determines that a foreign person has violated a regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, but in a case in which subsection (a)(2) may not apply, the President may apply the sanctions referred to in subsection (b) against that foreign person for a period of not more than 5 years.

(i) Compensation for diversion of militarily critical technologies to controlled countries

(1) In cases in which sanctions have been applied against a foreign person under subsection (a), the President shall initiate discussions with the foreign person and the government with jurisdiction over that foreign person regarding compensation on the part of the foreign person in an amount proportionate to the costs of research and development and procurement of new defensive systems by the United States and the allies of the United States to counteract the effect of the technological advance achieved by the Soviet Union as a result of the violation by that foreign person.

(2) The President shall, at the time that discussions are initiated under paragraph (1), report to the Congress that such discussions are being undertaken, and shall report to the Congress the outcome of those discussions.

(j) Other actions by the President

Upon making a determination under subsection (a) or (h), the President shall—

(1) initiate consultations with the foreign government with jurisdiction over the foreign person who committed the violation involved, in order to seek prompt remedial action by that government;

(2) initiate discussions with the governments participating in the Coordinating Committee regarding the violation and means to ensure that similar violations do not occur; and

(3) consult with and report to the Congress on the nature of the violation and the actions the President proposes to take, or has taken, to rectify the situation.

(k) Damages for certain violations

(1) In any case in which the President makes a determination under subsection (a), the Secretary of Defense shall determine the costs of restoring the military preparedness of the United States on account of the violation involved. The Secretary of Defense shall notify the Attorney General of his determination, and the Attorney General may bring an action for damages, in any appropriate district court of the United States, to recover such costs against the person who committed the violation, any person that is owned or controlled by the person who committed the violation, and any person who owns and controls the person who committed the violation.

(3)[1] The total amount awarded in any case brought under paragraph (2)[1] shall be determined by the court in light of the facts and circumstances, but shall not exceed the amount of the net loss to the national security of the United States. An action under this subsection shall be commenced not later than 3 years after the violation occurs, or one year after the violation is discovered, whichever is later.

***(l)* Definition**

For purposes of this section, the term ''foreign person'' means any person other than a United States person.

(Pub. L. 96–72, §11A, as added Pub. L. 100–418, title II, §2444, Aug. 23, 1988, 102 Stat. 1366.)

PROHIBITION ON PURCHASE OF TOSHIBA PRODUCTS FOR RESALE IN MILITARY EXCHANGE STORES

Pub. L. 101–165, title IX, §9087, Nov. 21, 1989, 103 Stat. 1148, provided that during period beginning Nov. 21, 1989, and through Dec. 28, 1991, no product manufactured or assembled by Toshiba America, Inc., or Toshiba Corporation (or any of its affiliates or subsidiaries) may be purchased by the Department of Defense for the purpose of resale of such product in a military exchange store or in any other morale, welfare, recreation, or resale activity operated by the Department of Defense (either directly or by concessionaire), with an exception for microwave ovens manufactured or assembled in the United States. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100–463, title VIII, §8092, Oct. 1, 1988, 102 Stat. 2270–34.

Pub. L. 100–456, div. A, title III, §313, Sept. 29, 1988, 102 Stat. 1951.

MANDATORY SANCTIONS AGAINST TOSHIBA AND KONGSBERG

Sections 2442 and 2443 of Pub. L. 100–418 contained congressional statement of findings, directed President to impose, for a period of 3 years, (1) a prohibition on contracting with, and procurement of products and services from, Toshiba Machine Company and Kongsberg Trading Company, and any other foreign person whom President found to have knowingly facilitated the diversion of advanced milling machinery by Toshiba Machine Company and Kongsberg Trading Company to the Soviet Union, by any department, agency, or instrumentality of United States Government, and (2) a prohibition on importation into United States of all products produced by Toshiba Machine Company, Kongsberg Trading Company, and any such foreign person; and directed President to impose, for a period of 3 years, a prohibition on contracting with, and procurement of products and services from, the Toshiba Corporation and Kongsberg Vaapenfabrikk, by any department, agency, or instrumentality of the United States Government, with certain exceptions.

§2410b. Missile proliferation control violations

(a) Violations by United States persons

(1) Sanctions

(A) If the President determines that a United States person knowingly—

(i) exports, transfers, or otherwise engages in the trade of any item on the MTCR

[1] So in original. Subsec. (k) was enacted without a par. (2).

Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7 of the Arms Export Control Act [22 U.S.C. 2797 et seq.], section 5 or 6 of this Act [section 2404 or 2405 of this Appendix], or any regulations or orders issued under any such provisions,

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in subparagraph (B).

(B) The sanctions which apply to a United States person under subparagraph (A) are the following:

(i) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person, for a period of 2 years, licenses for the transfer of missile equipment or technology controlled under this Act [sections 2401 to 2420 of this Appendix].

(ii) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the export of which is controlled under this Act [sections 2401 to 2420 of this Appendix].

(2) Discretionary sanctions

In the case of any determination referred to in paragraph (1), the Secretary may pursue any other appropriate penalties under section 11 of this Act [section 2410 of this Appendix].

(3) Waiver

The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(A) the product or service is essential to the national security of the United States; and

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(b) Transfers of missile equipment or technology by foreign persons

(1) Sanctions

(A) Subject to paragraphs (3) through (7), if the President determines that a foreign person, after the date of the enactment of this section [Nov. 5, 1990], knowingly—

(i) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act [sections 2401 to 2420 of this Appendix],

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person,

or if the President has made a determination with respect to a foreign person under section 73(a) of the Arms Export Control Act [22 U.S.C. 2797b(a)], then the President shall impose on that foreign person the applicable sanctions under subparagraph (B).

(B) The sanctions which apply to a foreign person under subparagraph (A) are the following:

(i) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of missile equipment or technology the export of which is controlled under this Act [sections 2401 to 2420 of this Appendix].

(ii) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign person of items the export of which is controlled under this Act [sections 2401 to 2420 of this Appendix].

(iii) If, in addition to actions taken under clauses (i) and (ii), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(2) Inapplicability with respect to MTCR adherents

Paragraph (1) does not apply with respect to—

(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(B) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

(3) Effect of enforcement actions by MTCR adherents

Sanctions set forth in paragraph (1) may not be imposed under this subsection on a person with respect to acts described in such paragraph or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts.

(4) Advisory opinions

The Secretary, in consultation with the Secretary of State and the Secretary of Defense, may, upon the request of any person, issue an advisory opinion to that person as to whether

a proposed activity by that person would subject that person to sanctions under this subsection. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

(5) Waiver and report to Congress

(A) In any case other than one in which an advisory opinion has been issued under paragraph (4) stating that a proposed activity would not subject a person to sanctions under this subsection, the President may waive the application of paragraph (1) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(B) In the event that the President decides to apply the waiver described in subparagraph (A), the President shall so notify the Congress not less than 20 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(6) Additional waiver

The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(A) the product or service is essential to the national security of the United States; and

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(7) Exceptions

The President shall not apply the sanction under this subsection prohibiting the importation of the products of a foreign person—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production,

(iii) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(iv) information and technology essential to United States products or production.

(c) Definitions

For purposes of this section and subsections (k) and (*l*) of section 6 [section 2405(k) and (*l*) of this Appendix]—

(1) the term ''missile'' means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

(2) the term ''Missile Technology Control Regime'' or ''MTCR'' means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(3) the term ''MTCR adherent'' means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR;

(4) the term ''MTCR Annex'' means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(5) the terms ''missile equipment or technology'' and ''MTCR equipment or technology'' mean those items listed in category I or category II of the MTCR Annex;

(6) the term ''foreign person'' means any person other than a United States person;

(7)(A) the term ''person'' means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

(B) in the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term ''person'' means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

(ii) all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment; and

(8) the term ''otherwise engaged in the trade of'' means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

(Pub. L. 96–72, § 11B, as added Pub. L. 101–510, div. A, title XVII, § 1702(b), Nov. 5, 1990, 104 Stat. 1741.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (a)(1)(A)(i), is Pub. L. 90–269, Oct. 22, 1968, 82 Stat. 1320, as amended. Chapter 7 of the Act is classified generally to subchapter VII (§ 2797 et seq.) of chapter 39 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Commerce, with certain exceptions, by section 2(b) of Ex. Ord. No. 12851, June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of Title 22, Foreign Relations and Intercourse.

§ 2410c. Chemical and biological weapons proliferation sanctions

(a) Imposition of sanctions

(1) Determination by the President

Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after October 28, 1991, has knowingly and materially contributed—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this Act [sections 2401 to 2420 of this Appendix], or

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this Act [sections 2401 to 2420 of this Appendix],

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) Countries, projects, or entities receiving assistance

Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of this Act [section 2405(j) of this Appendix] to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) Persons against which sanctions are to be imposed

Sanctions shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) Consultations with and actions by foreign government of jurisdiction

(1) Consultations

If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

(2) Actions by government of jurisdiction

In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) Report to Congress

The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) Sanctions

(1) Description of sanctions

The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

(A) Procurement sanction

The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(B) Import sanctions

The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

(2) Exceptions

The President shall not be required to apply or maintain sanctions under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) Termination of sanctions

The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) Waiver

(1) Criterion for waiver

The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) Notification of and report to Congress

If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) Definition of foreign person

For the purposes of this section, the term ''foreign person'' means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

(Pub. L. 96–72, § 11C, as added and amended Pub. L. 102–182, title III, §§ 305(a), 309(b)(1), Dec. 4, 1991, 105 Stat. 1247, 1258.)

PRIOR PROVISIONS

A prior section 2410c, Pub. L. 96–72, § 11C, as added Pub. L. 102–138, title V, § 505(a), Oct. 28, 1991, 105 Stat. 724, contained provisions substantially identical to those added by section 305(a) of Pub. L. 102–182, prior to repeal by Pub. L. 102–182, § 309(a).

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–182, § 309(b)(1), substituted ''October 28, 1991'' for reference to the ''date of the enactment of this section'' which was enacted Dec. 4, 1991.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State, with certain exceptions, by section 1(a) of Ex. Ord. No. 12851, June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of Title 22, Foreign Relations and Intercourse.

§ 2411. Enforcement

(a) General authority

(1) To the extent necessary or appropriate to the enforcement of this Act [sections 2401 to 2420 of this Appendix] or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 [former sections 2021 to 2032 of this Appendix] or the Export Administration Act of 1969 [former sections 2401 to 2413 of this Appendix], the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department or agency (and such officers or employees) may obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a sub-

pena issued to, any such person, a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. In addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of section 8 of this Act [section 2407 of this Appendix].

(2)(A) Subject to subparagraph (B) of this paragraph, the United States Customs Service is authorized, in the enforcement of this Act [sections 2401 to 2420 of this Appendix], to search, detain (after search), and seize goods or technology at those ports of entry or exit from the United States where officers of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

(B) An officer of the United States Customs Service may do the following in carrying out enforcement authority under this Act [sections 2401 to 2420 of this Appendix]:

(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act [sections 2401 to 2420 of this Appendix].

(ii) Search any package or container in which such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act [sections 2401 to 2420 of this Appendix].

(iii) Detain (after search) or seize and secure for trial any goods or technology on or about such vehicle, vessel, aircraft, or person, or in such package or container, if such officer has probable cause to believe the goods or technology has been, is being, or is about to be exported from the United States in violation of this Act [sections 2401 to 2420 of this Appendix].

(iv) Make arrests without warrant for any violation of this Act [sections 2401 to 2420 of this Appendix] committed in his or her presence or view or if the officer has probable cause to believe that the person to be arrested has committed or is committing such a violation.

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws. The Customs Service may not detain for more than 20 days any shipment of goods or technology eligible for export under a general license under section 4(a)(3) [section 2403(a)(3) of this Appendix]. In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export license authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 20-day period. At the end of that 20-day period, the Customs Service shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.

(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall have the responsibility for the enforcement of section 8 of this Act [section 2407 of this Appendix] and, in the enforcement of the other provisions of this Act [sections 2401 to 2420 of this Appendix], the Secretary is authorized to search, detain (after search), and seize goods or technology at those places within the United States other than those ports specified in paragraph (2)(A) of this subsection. The search, detention (after search), or seizure of goods or technology at those ports and places specified in paragraph (2)(A) may be conducted by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

(B) The Secretary may designate any employee of the Office of Export Enforcement of the Department of Commerce to do the following in carrying out enforcement authority under this Act [sections 2401 to 2420 of this Appendix]:

(i) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of the provisions of this Act [sections 2401 to 2420 of this Appendix].

(ii) Make arrests without warrant for any violation of this Act [sections 2401 to 2420 of this Appendix] committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing such a violation.

(iii) Carry firearms in carrying out any activity described in clause (i) or (ii).

(4) The authorities first conferred by the Export Administration Amendments Act of 1985 under paragraph (3) shall be exercised pursuant to guidelines approved by the Attorney General. Such guidelines shall be issued not later than 120 days after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985].

(5) All cases involving violations of this Act [sections 2401 to 2420 of this Appendix] shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 11(c) of this Act [section 2410(c) of this Appendix], or to the Attorney General for criminal action in accordance with this Act [sections 2401 to 2420 of this Appendix].

(6) Notwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export controls under this Act [sections 2401 to 2420 of this Appendix] not more than $12,000,000 in the fiscal year 1985 and not more than $14,000,000 in the fiscal year 1986.

(7) Not later than 90 days after the date of the enactment of the Export Administration

Amendments Act of 1985 [July 12, 1985], the Secretary, with the concurrence of the Secretary of the Treasury, shall publish in the Federal Register procedures setting forth, in accordance with this subsection, the responsibilities of the Department of Commerce and the United States Customs Service in the enforcement of this Act [sections 2401 to 2420 of this Appendix]. In addition, the Secretary, with the concurrence of the Secretary of the Treasury, may publish procedures for the sharing of information in accordance with subsection (c)(3) of this section, and procedures for the submission to the appropriate departments and agencies by private persons of information relating to the enforcement of this Act [sections 2401 to 2420 of this Appendix].

(8) For purposes of this section, a reference to the enforcement of this Act [sections 2401 to 2420 of this Appendix] or to a violation of this Act [sections 2401 to 2420 of this Appendix] includes a reference to the enforcement or a violation of any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix].

(b) Immunity

No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(c) Confidentiality

(1) Except as otherwise provided by the third sentence of section 8(b)(2) [section 2407(b)(2) of this Appendix] and by section 11(c)(2)(C) of this Act [section 2410(c)(2)(C) of this Appendix], information obtained under this Act [sections 2401 to 2420 of this Appendix] on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act [sections 2401 to 2420 of this Appendix] after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act [sections 2401 to 2420 of this Appendix] shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act [sections 2401 to 2420 of this Appendix] had not been enacted.

(2) Nothing in this Act [sections 2401 to 2420 of this Appendix] shall be construed as authorizing the withholding of information from the Congress or from the Government Accountability Office. All information obtained at any time under this Act [sections 2401 to 2420 of this Appendix] or previous Acts regarding the control of exports, including any report or license application required under this Act [sections 2401 to 2420 of this Appendix], shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act [sections 2401 to 2420 of this Appendix] or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act 1921 [31 U.S.C. 716], be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the Government Accountability Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the Government Accountability Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3) Any department or agency which obtains information which is relevant to the enforcement of this Act [sections 2401 to 2420 of this Appendix], including information pertaining to any investigation, shall furnish such information to each department or agency with enforcement responsibilities under this Act [sections 2401 to 2420 of this Appendix] to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1986 [26 U.S.C. 6103(b)], may be disclosed only as authorized by such section. The Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions. The Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one another and with the heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

(d) Reporting requirements

In the administration of this Act [sections 2401 to 2420 of this Appendix], reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documenta-

tion required under this Act [sections 2401 to 2420 of this Appendix] to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(e) Simplification of regulations

The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h) [section 2404(h) of this Appendix], shall review the regulations issued under this Act [sections 2401 to 2420 of this Appendix] and the commodity control list in order to determine how compliance with the provisions of this Act [sections 2401 to 2420 of this Appendix] can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

(Pub. L. 96–72, § 12, Sept. 29, 1979, 93 Stat. 530; Pub. L. 97–145, §§ 3, 5, Dec. 29, 1981, 95 Stat. 1727, 1728; Pub. L. 99–64, title I, § 113, July 12, 1985, 99 Stat. 148; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–418, title II, § 2427, Aug. 23, 1988, 102 Stat. 1361; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The Export Control Act of 1949, referred to in subsec. (a)(1), is act Feb. 26, 1949, ch. 11, 63 Stat. 7, as amended, which was classified to sections 2021 to 2032 of this Appendix, and terminated on Dec. 31, 1969, pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.

The Export Administration Act of 1969, referred to in subsec. (a)(1), is Pub. L. 91–184, Dec. 30, 1969, 83 Stat. 841, as amended, which was classified generally to sections 2401 to 2413 of this Appendix, and terminated on Sept. 30, 1979, pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.

The Export Administration Amendments Act of 1985, referred to in subsec. (a)(4), is titles I and II of Pub. L. 99–64, July 12, 1985, 99 Stat. 120, which, among other amendments, enacted par. (3) of subsec. (a) of this section. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 2401 of this Appendix and Tables.

Section 313 of the Budget and Accounting Act 1921, referred to in subsec. (c)(2), is section 313 of act June 10, 1921, ch. 18, title III, 42 Stat. 26, which was classified to section 54 of former Title 31, and which was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, and reenacted by the first section thereof as section 716 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 2411, Pub. L. 91–184, § 12, Dec. 30, 1969, 83 Stat. 846, relating to the effect on the Act of Feb. 15, 1936 (49 Stat. 1140) and section 414 of the Mutual Security Act of 1934 (22 U.S.C. 1934) provisions of the Export Administration Act of 1969, expired on Sept. 30, 1979.

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' wherever appearing.

1988—Subsec. (a)(2)(B). Pub. L. 100–418 inserted at end ''The Customs Service may not detain for more than 20 days any shipment of goods or technology eligible for export under a general license under section 4(a)(3). In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export license authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 20-day period. At the end of that 20-day period, the Customs Service shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.''

1986—Subsec. (c)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1985—Subsec. (a)(1). Pub. L. 99–64, § 113(a), designated existing provisions of subsec. (a) as par. (1), substituted ''such investigations within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department or agency (and such officers or employees) may'' for ''such investigations and'', and ''a district court of the United States,'' for ''the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and'', and inserted sentence providing that in addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of section 8 of this Act.

Subsec. (a)(2) to (8). Pub. L. 99–64, § 113(a)(5), added pars. (2) to (8).

Subsec. (c)(3). Pub. L. 99–64, § 113, substituted ''Any department or agency which obtains information which is relevant to the enforcement of this Act, including information pertaining to any investigation, shall furnish such information to each department or agency'' for ''Departments or agencies which obtain information which is relevant to the enforcement of this Act shall furnish such information to the department or agency'', and inserted sentences providing that the Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions and that the Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one another and with the heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

1981—Subsec. (c)(2). Pub. L. 97–145, § 5, substantially reenacted existing provisions, inserted provisions that the information may not be withheld from the General Accounting Office, and that the information be made available to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized to have access to such information which is submitted on a confidential basis and from which any individual can be identified, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with section 54 of title 31, be made available only by that agency.

Subsec. (c)(3). Pub. L. 97–145, § 3, added par. (3).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2411a. Omitted

CODIFICATION

A prior section 2411a, Pub. L. 91–184, § 13, as added Pub. L. 95–52, title I, § 102, June 22, 1977, 91 Stat. 235, authorizing appropriations to carry out purposes of provisions of Export Administration Act of 1969, expired on Sept. 30, 1979.

§ 2412. Administrative procedure and judicial review

(a) Exemption

Except as provided in section 11(c)(2) [section 2410(c)(2) of this Appendix] and subsection (c) of this section, the functions exercised under this Act [sections 2401 to 2420 of this Appendix] are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) Public participation

It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act [sections 2401 to 2420 of this Appendix] be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act [sections 2401 to 2420 of this Appendix] is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

(c) Procedures relating to civil penalties and sanctions

(1) In any case in which a civil penalty or other civil sanction (other than a temporary denial order or a penalty or sanction for a violation of section 8 [section 2407 of this Appendix]) is sought under section 11 of this Act [section 2410 of this Appendix], the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Subject to the provisions of this subsection, any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United States Code. With the approval of the administrative law judge, the Government may present evidence in camera in the presence of the charged party or his or her representative. After the hearing, the administrative law judge shall make findings of fact and conclusions of law in a written decision, which shall be referred to the Secretary. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after receiving the decision. The order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3).

(2) The proceedings described in paragraph (1) shall be concluded within a period of 1 year after the complaint is submitted, unless the administrative law judge extends such period for good cause shown.

(3) The order of the Secretary under paragraph (1) shall be final, except that the charged party may, within 15 days after the order is issued, appeal the order in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may, while the appeal is pending, stay the order of the Secretary. The court may review only those issues necessary to determine liability for the civil penalty or other sanction involved. In an appeal filed under this paragraph, the court shall set aside any finding of fact for which the court finds there is not substantial evidence on the record and any conclusion of law which the court finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(4) An administrative law judge referred to in this subsection shall be appointed by the Secretary from among those considered qualified for selection and appointment under section 3105 of title 5, United States Code. Any person who, for at least 2 of the 10 years immediately preceding the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985], has served as a hearing commissioner of the Department of Commerce shall be included among those considered as qualified for selection and appointment to such position.

(d) Imposition of temporary denial orders

(1) In any case in which it is necessary, in the public interest, to prevent an imminent violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix], the Secretary may, without a hearing, issue an order temporarily denying United States export privileges (hereinafter in this subsection referred to as a ''temporary denial order'') to a person. A temporary denial order may be effective no longer than 180 days unless renewed in writing by the Secretary for additional 180-day periods in order to prevent such an imminent violation, except that a temporary denial order may be renewed only after notice and an opportunity for a hearing is provided.

(2) A temporary denial order shall define the imminent violation and state why the temporary denial order was granted without a hearing. The person or persons subject to the issuance or renewal of a temporary denial order may file an appeal of the issuance or renewal of the temporary denial order with an administrative law judge who shall, within 10 working days after the appeal is filed, recommend that the temporary denial order be affirmed, modified, or vacated. Parties may submit briefs and other material to the judge. The recommendation of the administrative law judge shall be submitted to the Secretary who shall either accept, reject, or modify the recommendation by written order within 5 working days after receiving the recommendation. The written order of the Secretary under the preceding sentence shall be final and is not subject to judicial review, except as provided in paragraph (3). The temporary denial order shall be affirmed only if it is reasonable to believe that the order is required in the public interest to prevent an imminent violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix]. All materials submitted to the administrative law judge and the Secretary shall constitute the

administrative record for purposes of review by the courts.

(3) An order of the Secretary affirming, in whole or in part, the issuance of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may review only those issues necessary to determine whether the standard for issuing the temporary denial order has been met. The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(e) Appeals from license denials

A determination of the Secretary, under section 10(f) of this Act [section 2409(f) of this Appendix], to deny a license may be appealed by the applicant to an administrative law judge who shall have the authority to conduct proceedings to determine only whether the item sought to be exported is in fact on the control list. Such proceedings shall be conducted within 90 days after the appeal is filed. Any determination by an administrative law judge under this subsection and all materials filed before such judge in the proceedings shall be reviewed by the Secretary, who shall either affirm or vacate the determination in a written decision within 30 days after receiving the determination. The Secretary's written decision shall be final and is not subject to judicial review. Subject to the limitations provided in section 12(c) of this Act [section 2411(c) of this Appendix], the Secretary's decision shall be published in the Federal Register.

(Pub. L. 96–72, §13, Sept. 29, 1979, 93 Stat. 531; Pub. L. 99–64, title I, §114, July 12, 1985, 99 Stat. 150; Pub. L. 100–418, title II, §2428, Aug. 23, 1988, 102 Stat. 1361.)

PRIOR PROVISIONS

A prior section 2412, Pub. L. 91–184, §14, formerly §13, Dec. 30, 1969, 83 Stat. 847; renumbered §14, Pub. L. 95–52, title I, §102, June 22, 1977, 91 Stat. 235, which set forth the effective date of the Export Administration Act of 1969 as the date upon which the Export Control Act of 1949 expired, Dec. 31, 1969, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100–418, §2428(a)(1)(A), inserted ", except as provided in paragraph (3)" before period at end.

Subsec. (c)(3), (4). Pub. L. 100–418, §2428(a)(1)(B), (C), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d)(1). Pub. L. 100–418, §2428(b), substituted "180" for "60" in two places in second sentence.

Subsec. (d)(2). Pub. L. 100–418, §2428(a)(2), inserted ", except as provided in paragraph (3)" after "judicial review" before period at end of fifth sentence and inserted sentence at end that all materials submitted to the administrative law judge and the Secretary constitute the administrative record for purposes of review.

Subsec. (d)(3). Pub. L. 100–418, §2428(a)(2)(B), added par. (3).

1985—Pub. L. 99–64, §114(1), struck out "Exemption from certain provisions relating to" in section catchline.

Subsec. (a). Pub. L. 99–64, §114(2), inserted "and subsection (c) of this section".

Subsecs. (c) to (e). Pub. L. 99–64, §114(3), added subsecs. (c) to (e).

§ 2413. Annual report

(a) Contents

Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act [sections 2401 to 2420 of this Appendix] during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

(1) the implementation of the policies set forth in section 3 [section 2402 of this Appendix];

(2) general licensing activities under sections 5, 6, and 7 [sections 2404, 2405, and 2406 of this Appendix], and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a) [sections 2404(a), 2405(a), and 2406(a) of this Appendix];

(3) the results of the review of United States policy toward individual countries pursuant to section 5(b) [section 2404(b) of this Appendix];

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3) [section 2404(c)(3) of this Appendix];

(5) actions taken to carry out section 5(d) [section 2404(d) of this Appendix];

(6) changes in categories of items under export control referred to in section 5(e) [section 2404(e) of this Appendix];

(7) determinations of foreign availability made under section 5(f) [section 2404(f) of this Appendix], the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 5(f)(6) [section 2404(f)(6) of this Appendix];

(9) the operation of the indexing system under section 5(g) [section 2404(g) of this Appendix];

(10) consultations with the technical advisory committees established pursuant to section 5(h) [section 2404(h) of this Appendix], the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act [sections 2401 to 2420 of this Appendix];

(11) the effectiveness of export controls imposed under section 6 [section 2405 of this Appendix] in furthering the foreign policy of the United States;

(12) export controls and monitoring under section 7 [section 2406 of this Appendix];

(13) the information contained in the reports required by section 7(b)(2) [section 2406(b)(2) of this Appendix], together with an analysis of—

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under

this Act [sections 2401 to 2420 of this Appendix] or section 812[1] of the Agricultural Act of 1970 [7 U.S.C. 612c–3];

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act [section 2402(5) of this Appendix];

(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act [sections 2401 to 2420 of this Appendix], including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10 [section 2409 of this Appendix], including an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

(16) delegations of authority by the President as provided in section 4(e) of this Act [section 2403(e) of this Appendix];

(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act [sections 2401 to 2420 of this Appendix];

(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d) [section 2411(d) of this Appendix], and any action taken, on the basis of the review required by section 12(e) [section 2411(e) of this Appendix], to simplify regulations issued under this Act [sections 2401 to 2420 of this Appendix];

(19) violations under section 11 [section 2410 of this Appendix] and enforcement activities under section 12 [section 2411 of this Appendix]; and

(20) the issuance of regulations under the authority of this Act [sections 2401 to 2420 of this Appendix], including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b) [section 2412(b) of this Appendix].

(b) Report on certain export controls

To the extent that the President determines that the policies set forth in section 3 of this Act [section 2402 of this Appendix] require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

(c) Report on negotiations

The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i) [section 2404(i) of this Appendix], until such negotiations are concluded.

[1] See References in Text note below.

(d) Report on exports to controlled countries

The Secretary shall include in each annual report a detailed report which lists every license for exports to controlled countries which was approved under this Act [sections 2401 to 2420 of this Appendix] during the preceding fiscal year. Such report shall specify to whom the license was granted, the type of goods or technology exported, and the country receiving the goods or technology. The information required by this subsection shall be subject to the provisions of section 12(c) of this Act [section 2411(c) of this Appendix].

(e) Report on domestic economic impact of exports to controlled countries

The Secretary shall include in each annual report a detailed description of the extent of injury to United States industry and the extent of job displacement caused by United States exports of goods and technology to controlled countries. The annual report shall also include a full analysis of the consequences of exports of turnkey plants and manufacturing facilities to controlled countries which are used by such countries to produce goods for export to the United States or to compete with United States products in export markets.

(f) Annual report of the President

The President shall submit an annual report to the Congress estimating the additional defense expenditures of the United States arising from illegal technology transfers, focusing on estimated defense costs arising from illegal technology transfers that resulted in a serious adverse impact on the strategic balance of forces. These estimates shall be based on assessment by the intelligence community of any technology transfers that resulted in such serious adverse impact. This report may have a classified annex covering any information of a sensitive nature.

(Pub. L. 96–72, §14, Sept. 29, 1979, 93 Stat. 532; Pub. L. 99–64, title I, §115, July 12, 1985, 99 Stat. 152; Pub. L. 100–418, title II, §§2418(c), 2445, Aug. 23, 1988, 102 Stat. 1357, 1369.)

REFERENCES IN TEXT

Section 812 of the Agricultural Act of 1970, referred to in subsec. (a)(13)(A), which was classified to section 612c–3 of Title 7, Agriculture, was repealed by Pub. L. 101–624, title XV, §1578, Nov. 28, 1990, 104 Stat. 3702.

PRIOR PROVISIONS

A prior section 2413, Pub. L. 91–184, §15, formerly §14, Dec. 30, 1969, 83 Stat. 847; Pub. L. 92–37, June 30, 1971, 85 Stat. 89; Pub. L. 92–150, Oct. 30, 1971, 85 Stat. 416; Pub. L. 92–284, Apr. 29, 1972, 86 Stat. 133; Pub. L. 92–412, title I, §106, Aug. 29, 1972, 86 Stat. 646; Pub. L. 93–327, June 30, 1974, 88 Stat. 287; Pub. L. 93–372, Aug. 14, 1974, 88 Stat. 444; Pub. L. 93–500, §13, Oct. 29, 1974, 88 Stat. 1557; renumbered §15 and amended Pub. L. 95–52, title I, §§101, 102, June 22, 1977, 91 Stat. 235, providing for the termination of authority granted by the Export Administration Act of 1969, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (a)(8). Pub. L. 100–418, §2418(c), substituted ''5(f)(6)'' for ''5(f)(5)''.

Subsec. (f). Pub. L. 100–418, §2445, added subsec. (f).

1985—Subsec. (a)(15). Pub. L. 99–64, §115(a), struck out ''an analysis of the time required to process license ap-

plications, the number and disposition of export license applications taking more than 30 days to process, and'' after ''requirements of section 10, including''.

Subsecs. (d), (e). Pub. L. 99–64, § 115(b), added subsecs. (d) and (e).

DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix.

§ 2414. Administrative and regulatory authority

(a) Under Secretary of Commerce

The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this Act [sections 2401 to 2420 of this Appendix] and such other statutes that relate to national security which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration before the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985], and such other functions under this Act [sections 2401 to 2420 of this Appendix] which were delegated to such office before such date of enactment, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

(b) Issuance of regulations

The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act [sections 2401 to 2420 of this Appendix]. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b) [section 2404(a), 2405(a), 2406(a), or 2407(b) of this Appendix] may apply to the financing, transporting, or other servicing of exports and the participation therein by any person. Any such regulations the purpose of which is to carry out the provisions of section 5 [section 2404 of this Appendix], or of section 4(a) [section 2403(a) of this Appendix] for the purpose of administering the provisions of section 5 [section 2404 of this Appendix], may be issued only after the regulations are submitted for review to the Secretary of Defense, the Secretary of State, such other departments and agencies as the Secretary considers appropriate, and the appropriate technical advisory committee. The preceding sentence does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

(c) Amendments to regulations

If the Secretary proposes to amend regulations issued under this Act [sections 2401 to 2420 of this Appendix], the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the technical advisory committees authorized under section 5(h) of this Act [section 2404(h) of this Appendix] in formulating or amending regulations issued under this Act [sections 2401 to 2420 of this Appendix]. The procedures defined by regulations in effect on January 1, 1984, with respect to sections 4 and 5 of this Act [sections 2403 and 2404 of this Appendix], shall remain in effect unless the Secretary determines, on the basis of substantial and reliable evidence, that specific change is necessary to enhance the prevention of diversions of exports which would prove detrimental to the national security of the United States or to reduce the licensing and paperwork burden on exporters and their distributors.

(Pub. L. 96–72, § 15, Sept. 29, 1979, 93 Stat. 533; Pub. L. 99–64, title I, § 116(a), July 12, 1985, 99 Stat. 152; Pub. L. 100–418, title II, §§ 2420(b), 2429, Aug. 23, 1988, 102 Stat. 1358, 1362.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–418, § 2429, inserted ''and such other statutes that related to national security'' after ''Secretary under this Act''.

Subsec. (b). Pub. L. 100–418, § 2420(b), substituted ''such other'' for ''and such other'' and inserted '', and the appropriate technical advisory committee'' after ''appropriate''.

1985—Pub. L. 99–64 substituted ''Administrative and regulatory authority'' for ''Regulatory authority'' as section catchline, and amended text generally. Prior to amendment, section read as follows: ''The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person.''

EFFECTIVE DATE OF 1985 AMENDMENT

Subsec. (a) of this section effective Oct. 1, 1987, see section 116(d) of Pub. L. 99–64, set out as a note under section 5314 of Title 5, Government Organization and Employees.

DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix.

SPENDING AUTHORITY UNDER 1985 AMENDMENT

Section 116(e) of Pub. L. 99–64 provided that: ''Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974 [2 U.S.C. 651]) which is provided under this section [amending this section and sections 5314 and 5315 of Title 5, Government Organization and Employees] shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriation Acts.''

§ 2415. Definitions

As used in this Act [sections 2401 to 2420 of this Appendix]—

(1) the term ''person'' includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term ''United States person'' means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of

any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(3) the term ''good'' means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

(4) the term ''technology'' means the information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves;

(5) the term ''export'' means—

(A) an actual shipment, transfer, or transmission of goods or technology out of the United States;

(B) a transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or

(C) a transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient;

(6) the term ''controlled country'' means a controlled country under section 5(b)(1) of this Act [section 2404(b)(1) of this Appendix];

(7) the term ''United States'' means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

(8) the term ''Secretary'' means the Secretary of Commerce.

(Pub. L. 96–72, §16, Sept. 29, 1979, 93 Stat. 533; Pub. L. 99–64, title I, §117, July 12, 1985, 99 Stat. 153.)

AMENDMENTS

1985—Par. (3). Pub. L. 99–64, §117(1), inserted ''natural or manmade substance,''.

Par. (4). Pub. L. 99–64, §117(2), amended par. (4) generally, substituting ''the term 'technology' means the information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves;'' for ''the information and knowhow that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves; and''.

Pars. (5) to (8). Pub. L. 99–64, §117(3), (4), added pars. (5) to (7) and redesignated former par. (5) as (8).

DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix.

§ 2416. Effect on other Acts

(a) In general

Except as otherwise provided in this Act [sections 2401 to 2420 of this Appendix], nothing contained in this Act [sections 2401 to 2420 of this Appendix] shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) Coordination of controls

The authority granted to the President under this Act [sections 2401 to 2420 of this Appendix] shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(c) Civil aircraft equipment

Notwithstanding any other provision of law, any product (1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act [sections 2401 to 2420 of this Appendix]. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act [22 U.S.C. 2778(b)(2)].

(d) Nonproliferation controls

(1) Nothing in section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978 [42 U.S.C. 2139a(c)].

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978 [42 U.S.C. 2139a(c)], is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act [section 2409 of this Appendix] shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act [section 2409(j) of this Appendix].

(e) Termination of other authority

On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611–1613d), is superseded.

(f) Agricultural Act of 1970

Nothing in this Act [sections 2401 to 2420 of this Appendix] shall affect the provisions of the last sentence of section 812[1] of the Agricultural Act of 1970 (7 U.S.C. 612c–3).

(Pub. L. 96–72, §17, Sept. 29, 1979, 93 Stat. 534; Pub. L. 99–64, title I, §118, July 12, 1985, 99 Stat. 154.)

[1] See References in Text note below.

REFERENCES IN TEXT

The Mutual Defense Assistance Control Act of 1951, referred to in subsec. (e), is act Oct. 26, 1951, ch. 575, 65 Stat. 644, as amended, which was classified generally to chapter 20A (§ 1611 et seq.) of Title 22, Foreign Relations and Intercourse, prior to its supersedure by subsec. (e) of this section. For complete classification of this Act to the Code, see Tables.

Section 812 of the Agricultural Act of 1970, referred to in subsec. (f), which was classified to section 612c–3 of Title 7, Agriculture, was repealed by Pub. L. 101–624, title XV, § 1578, Nov. 28, 1990, 104 Stat. 3702.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–64, § 118(a)(1), substituted ''Except as otherwise provided in this Act, nothing'' for ''Nothing''.

Subsec. (c). Pub. L. 99–64, § 118(a)(2), struck out sentence which provided that for purposes of this subsection ''controlled country'' means any country described in section 620(f) of the Foreign Assistance Act of 1961.

Subsec. (f). Pub. L. 99–64, § 118(b), added subsec. (f).

DELEGATION OF FUNCTIONS

Functions conferred upon President under sections 2401 to 2420 of this Appendix delegated to Secretary of Commerce, with certain exceptions, by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix.

§ 2417. Authorization of appropriations

(a) Requirement of authorizing legislation

(1) Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act [sections 2401 to 2420 of this Appendix] may be obligated or expended only if—

(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985]; or

(B) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

(2) To the extent that legislation enacted after the making of an appropriation to carry out the purposes of this Act [sections 2401 to 2420 of this Appendix] authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.

(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985] which specifically repeals, modifies, or supersedes the provisions of this subsection.

(b) Authorization

There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act [sections 2401 to 2420 of this Appendix]—

(1) $42,813,000 for the fiscal year 1993;

(2) such sums as may be necessary for the fiscal year 1994; and

(3) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

(Pub. L. 96–72, § 18, Sept. 29, 1979, 93 Stat. 534; Pub. L. 97–145, § 2(a), Dec. 29, 1981, 95 Stat. 1727; Pub. L. 99–64, title I, § 119, July 12, 1985, 99 Stat. 154; Pub. L. 99–633, § 1, Nov. 7, 1986, 100 Stat. 3522; Pub. L. 100–418, title II, § 2430, Aug. 23, 1988, 102 Stat. 1362; Pub. L. 103–10, § 1, Mar. 27, 1993, 107 Stat. 40.)

AMENDMENTS

1993—Subsec. (b)(1) to (3). Pub. L. 103–10 added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

''(1) $35,935,000 for the fiscal year 1988, of which $12,746,000 shall be available only for enforcement, $2,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5, and $21,189,000 shall be available for all other activities under this Act;

''(2) $46,913,000 for the fiscal year 1989, of which $15,000,000 shall be available only for enforcement, $5,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5, $4,000,000 shall be available only for regional export control assistance centers, and $22,913,000 shall be available for all other activities under this Act; and

''(3) such additional amounts for each of the fiscal years 1988 and 1989 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.''

1988—Subsec. (b)(1). Pub. L. 100–418, § 2430(1), substituted ''the fiscal year 1988'' for ''each of the fiscal years 1987 and 1988'' and struck out ''for each such year'' after ''available'' in three places and ''and'' after semicolon at end.

Subsec. (b)(2), (3). Pub. L. 100–418, § 2430(2), added pars. (2) and (3) and struck out former par. (2) which read as follows: ''such additional amounts for each of the fiscal years 1987 and 1988 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.''

1986—Subsec. (b). Pub. L. 99–633 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

''(1) $24,600,000 for the fiscal year 1985, of which $8,712,000 shall be available only for enforcement, $1,851,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5 of this Act, and $14,037,000 shall be available for all other activities under this Act;

''(2) $29,382,000 for the fiscal year 1986, of which $9,243,000 shall be available only for enforcement, $2,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5 of this Act, and $18,139,000 shall be available for all other activities under this Act; and

''(3) such additional amounts for each of the fiscal years 1985 and 1986 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.''

1985—Subsec. (a). Pub. L. 99–64, § 119, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act unless previously and specifically authorized by law.''

Subsec. (b). Pub. L. 99–64, § 119, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

''(1) $9,659,000 for each of the fiscal years 1982 and 1983; and

''(2) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.''

1981—Subsec. (b)(1). Pub. L. 97–145 substituted authorization of appropriation of $9,659,000 for each of the fiscal years 1982 and 1983 for authorization of appropriation of $8,000,000 for each of the fiscal years 1980 and 1981, of which $1,250,000 were to be available for each such fiscal year only for purpose of carrying out foreign availability assessments pursuant to section 2404(f)(5) of this Appendix.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2(b) of Pub. L. 97–145 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as of October 1, 1981.''

§ 2418. Effective date

This Act [sections 2401 to 2420 of this Appendix] shall take effect upon the expiration of the Export Administration Act of 1969 [former sections 2401 to 2413 of this Appendix].

(Pub. L. 96–72, § 19(a), Sept. 29, 1979, 93 Stat. 535.)

REFERENCES IN TEXT

The Export Administration Act of 1969, referred to in text, is Pub. L. 91–184, Dec. 30, 1969, 83 Stat. 841, as amended, which was classified generally to sections 2401 to 2413 of this Appendix, and terminated on Sept. 30, 1979, pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.

§ 2419. Termination date

The authority granted by this Act [sections 2401 to 2420 of this Appendix] terminates on August 20, 2001.

(Pub. L. 96–72, § 20, Sept. 29, 1979, 93 Stat. 535; Pub. L. 98–108, § 1, Oct. 1, 1983, 97 Stat. 744; Pub. L. 98–207, Dec. 5, 1983, 97 Stat. 1391; Pub. L. 98–222, Feb. 29, 1984, 98 Stat. 36; Pub. L. 99–64, title I, § 120, July 12, 1985, 99 Stat. 155; Pub. L. 100–418, title II, § 2431, Aug. 23, 1988, 102 Stat. 1362; Pub. L. 103–10, § 2, Mar. 27, 1993, 107 Stat. 40; Pub. L. 103–277, July 5, 1994, 108 Stat. 1407; Pub. L. 106–508, Nov. 13, 2000, 114 Stat. 2360.)

AMENDMENTS

2000—Pub. L. 106–508 substituted ''August 20, 2001'' for ''August 20, 1994''.

1994—Pub. L. 103–277 substituted ''August 20, 1994'' for ''June 30, 1994''.

1993—Pub. L. 103–10 substituted ''June 30, 1994'' for ''September 30, 1990''.

1988—Pub. L. 100–418 substituted ''1990'' for ''1989''.

1985—Pub. L. 99–64 amended section generally, substituting ''September 30, 1989'' for ''March 30, 1984, or upon any prior date which the President by proclamation may designate.''

1984—Pub. L. 98–222 substituted ''March 30'' for ''February 29''.

1983—Pub. L. 98–207 substituted ''February 29, 1984'' for ''October 14, 1983''.

Pub. L. 98–108 substituted ''October 14, 1983'' for ''September 30, 1983''.

DELEGATION OF FUNCTIONS

Functions conferred upon President under sections 2401 to 2420 of this Appendix delegated to Secretary of Commerce with certain exceptions, among them functions conferred upon President under this section, which were reserved to President, see Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix.

CONTINUATION OF EXPORT CONTROL REGULATIONS

Provisions relating to continued effectiveness of the Export Administration Act of 1979, 50 U.S.C. App. 2401 et seq., and to issuance and continued effectiveness of rules, regulations, orders, licenses, and other forms of administrative action and delegations of authority relating to administration of that Act, were contained in the following:

Ex. Ord. No. 13222, Aug. 17, 2001, 66 F.R. 44025, listed in a table under section 1701 of Title 50, War and National Defense.

Ex. Ord. No. 13206, Apr. 4, 2001, 66 F.R. 18397, listed in a table under section 1701 of Title 50.

Ex. Ord. No. 12924, Aug. 19, 1994, 59 F.R. 43437, listed in a table under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 13206, § 1, Apr. 4, 2001, 66 F.R. 18397.

Ex. Ord. No. 12923, June 30, 1994, 59 F.R. 34551, listed in a table under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12924, § 4, Aug. 19, 1994, 59 F.R. 43438.

Ex. Ord. No. 12867, Sept. 30, 1993, 58 F.R. 51747, listed in a table under section 1701 of Title 50.

Ex. Ord. No. 12730, Sept. 30, 1990, 55 F.R. 40373, listed in a table under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12867, Sept. 30, 1993, 58 F.R. 51747.

Ex. Ord. No. 12525, July 12, 1985, 50 F.R. 28757, listed in a table under section 1701 of Title 50.

Ex. Ord. No. 12470, Mar. 30, 1984, 49 F.R. 13099, listed in a table under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12525, July 12, 1985, 50 F.R. 28757.

Ex. Ord. No. 12451, Dec. 20, 1983, 48 F.R. 56563, listed in a table under section 1701 of Title 50.

Ex. Ord. No. 12444, Oct. 14, 1983, 48 F.R. 48215, listed in a table under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12451, Dec. 20, 1983, 48 F.R. 56563.

§ 2420. Savings provisions

(a) In general

All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 [former sections 2021 to 2032 of this Appendix] or the Export Administration Act of 1969 [former sections 2401 to 2413 of this Appendix] and which are in effect at the time this Act takes effect [September 30, 1979] shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act [sections 2401 to 2420 of this Appendix].

(b) Administrative proceedings

This Act [sections 2401 to 2420 of this Appendix] shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969 [former sections 2401 to 2413 of this Appendix], which is pending at the time this Act takes effect [September 30, 1979].

(Pub. L. 96–72, § 21, Sept. 29, 1979, 93 Stat. 535.)

REFERENCES IN TEXT

The Export Control Act of 1949, referred to in subsec. (a), is act Feb. 26, 1949, ch. 11, 63 Stat. 7, as amended, which was classified to sections 2021 to 2032 of this Appendix, and terminated on Dec. 31, 1969, pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.

The Export Administration Act of 1969, referred to in text, is Pub. L. 91–184, Dec. 30, 1969, 83 Stat. 841, as amended, which was classified generally to sections 2401 to 2413 of this Appendix, and terminated on Sept. 30, 1979, pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.