

§ 2155a. Regulations establishing Commission procedures covering grant, suspension, revocation, or amendment of nuclear export licenses or exemptions

(a) Omitted

(b) Within one hundred and twenty days of March 10, 1978, the Commission shall, after consultations with the Secretary of State, promulgate regulations establishing procedures (1) for the granting, suspending, revoking, or amending of any nuclear export license or exemption pursuant to its statutory authority; (2) for public participation in nuclear export licensing proceedings when the Commission finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by the 1954 Act, including such public hearings and access to information as the Commission deems appropriate: *Provided*, That judicial review as to any such finding shall be limited to the determination of whether such finding was arbitrary and capricious; (3) for a public written Commission opinion accompanied by the dissenting or separate views of any Commissioner, in those proceedings where one or more Commissioners have dissenting or separate views on the issuance of an export license; and (4) for public notice of Commission proceedings and decisions, and for recording of minutes and votes of the Commission: *Provided further*, That until the regulations required by this subsection have been promulgated, the Commission shall implement the provisions of this Act under temporary procedures established by the Commission.

(c) The procedures to be established pursuant to subsection (b) shall constitute the exclusive basis for hearings in nuclear export licensing proceedings before the Commission and, notwithstanding section 189 a. of the 1954 Act [42 U.S.C. 2239(a)], shall not require the Commission to grant any person an on-the-record hearing in such a proceeding.

(Pub. L. 95-242, title III, § 304(b), (c), Mar. 10, 1978, 92 Stat. 135.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

Section is based on subsecs. (b) and (c) of Pub. L. 95-242. Subsecs. (a) and (d) of Pub. L. 95-242 enacted sections 2155 and 2156a, respectively, of this title.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978,

92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

DEFINITIONS

For definitions of terms used in this section, see section 3203 of Title 22, Foreign Relations and Intercourse.

§ 2156. Criteria governing United States nuclear exports

The United States adopts the following criteria which, in addition to other requirements of law, will govern exports for peaceful nuclear uses from the United States of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology:

(1) IAEA safeguards as required by Article III(2) of the Treaty will be applied with respect to any such material or facilities proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

(2) No such material, facilities, or sensitive nuclear technology proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nuclear material produced through the use of such materials, facilities, or sensitive nuclear technology, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Following the effective date of any regulations promulgated by the Commission pursuant to section 2156a of this title, physical security measures shall be deemed adequate if such measures provide a level of protection equivalent to that required by the applicable regulations.

(4) No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

(6) No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material

or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology.

(Aug. 1, 1946, ch. 724, title I, §127, as added Pub. L. 95-242, title III, §305, Mar. 10, 1978, 92 Stat. 136; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2156a. Regulations establishing levels of physical security to protect facilities and material

Within sixty days of March 10, 1978, the Commission shall, in consultation with the Secretary of State, the Secretary of Energy, and the Secretary of Defense, promulgate (and may from time to time amend) regulations establishing the levels of physical security which in its judgement are no less strict than those established by any international guidelines to which the United States subscribes and which in its judgment will provide adequate protection for facilities and material referred to in paragraph (3) of section 2156 of this title taking into consideration variations in risks to security as appropriate.

(Pub. L. 95-242, title III, §304(d), Mar. 10, 1978, 92 Stat. 135; Pub. L. 105-277, div. G, title XII, §1225(e)(3), Oct. 21, 1998, 112 Stat. 2681-775.)

REFERENCES IN TEXT

Commission, referred to in text, is defined as meaning the Nuclear Regulatory Commission by section 4(a)(1) of the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, which is classified to section 3203(a)(1) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

1998—Pub. L. 105-277 substituted “and the Secretary of Defense,” for “the Secretary of Defense, and the Director,”.

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 Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105-277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2157. Additional export criterion and procedures

(a)(1) As a condition of continued United States export of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology to non-nuclear-weapon states, no such export shall be made unless IAEA safeguards are maintained with respect to all peaceful nuclear activities in, under the jurisdiction of, or carried out under the control of such state at the time of the export.

(2) The President shall seek to achieve adherence to the foregoing criterion by recipient non-nuclear-weapon states.

(b) The criterion set forth in subsection (a) shall be applied as an export criterion with respect to any application for the export of materials, facilities, or technology specified in subsection (a) which is filed after eighteen months from March 10, 1978, or for any such application under which the first export would occur at least twenty-four months after March 10, 1978, except as provided in the following paragraphs:

(1) If the Commission or the Department of Energy, as the case may be, is notified that the President has determined that failure to approve an export to which this subsection applies because such criterion has not yet been met would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, the license or authorization may be issued subject to other applicable requirements of the law: *Provided*, That no such export of any production or utilization facility or of any source or special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-nuclear-weapon state which has failed to meet such criterion until the first such license or authorization with respect to such state is submitted to the Congress (together with a detailed assessment of the reasons underlying the President's determination, the judgment of the executive branch required under section 2155 of this title, and any Commission opinion and views) for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of