

that Board having been created by that Plan as an agency within Department of Commerce with an independent status in some respects, and transferred remainder of Commission's functions and functions of its Chairman to Secretary of Commerce, with power vested in Secretary to authorize their performance by Maritime Administrator, the head of Maritime Administration, which likewise was established by the Plan in Department of Commerce with provision that Chairman of Federal Maritime Board should, ex officio, be that Administrator.

Federal Maritime Board, including offices of members of Board, abolished by section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 843, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Board transferred either to Federal Maritime Commission or to Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

CHAPTER 58—EXPORT CONTROL REFORM

Sec.

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§ 4801. Definitions

In this chapter:

(1) Controlled

The term “controlled” refers to an item subject to the jurisdiction of the United States under subchapter I.

(2) Dual-use

The term “dual-use”, with respect to an item, means the item has civilian applications and military, terrorism, weapons of mass destruction, or law-enforcement-related applications.

(3) Export

The term “export”, with respect to an item subject to controls under subchapter I, includes—

(A) the shipment or transmission of the item out of the United States, including the sending or taking of the item out of the United States, in any manner; and

(B) the release or transfer of technology or source code relating to the item to a foreign person in the United States.

(4) Export Administration Regulations

The term “Export Administration Regulations” means—

(A) the Export Administration Regulations as promulgated, maintained, and amended under the authority of the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.] and codified, as of August 13, 2018, in subchapter C of chapter VII of title 15, Code of Federal Regulations; or

(B) regulations that are promulgated, maintained, and amended under the authority of subchapter I on or after August 13, 2018.

(5) Foreign person

The term “foreign person” means—

(A) any natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual (as such term is defined in section 1324b(a)(3) of title 8);

(B) any corporation, business association, partnership, trust, society or any other entity or group that is not incorporated in the United States or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of a foreign government (e.g., diplomatic mission).

(6) In-country transfer

The term “in-country transfer”, with respect to an item subject to controls under subchapter I, means a change in the end-use or end user of the item within the same foreign country.

(7) Item

The term “item” means a commodity, software, or technology.

(8) Person

The term “person” means—

(A) a natural person;

(B) a corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, or any government or agency thereof; and

(C) any successor to any entity described in subparagraph (B).

(9) Reexport

The term “reexport”, with respect to an item subject to controls under subchapter I, includes—

(A) the shipment or transmission of the item from a foreign country to another foreign country, including the sending or taking of the item from the foreign country to the other foreign country, in any manner; and

(B) the release or transfer of technology or source code relating to the item to a foreign person outside the United States.

(10) Secretary

Except as otherwise provided, the term “Secretary” means the Secretary of Commerce.

(11) Technology

The term “technology” includes information, in tangible or intangible form, necessary for the development, production, or use of an item.

(12) United States

The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.

(13) United States person

The term “United States person” means—

(A) for purposes of subchapter I—

(i) any individual who is a citizen or national of the United States or who is an individual described in subparagraph (B) of section 1324b(a)(3) of title 8;

(ii) a corporation or other legal entity which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia; and

(iii) any person in the United States; and

(B) for purposes of subchapter II, 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 by the Secretary.

(14) Weapons of mass destruction

The term “weapons of mass destruction” means nuclear, radiological, chemical, and biological weapons and delivery systems for such weapons.

(Pub. L. 115-232, div. A, title XVII, § 1742, Aug. 13, 2018, 132 Stat. 2208.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this subtitle”, meaning subtitle B (§§ 1741–1781) of title XVII of div. A of Pub. L. 115-232, Aug. 13, 2018, 132 Stat. 2208, known as the Export Control Reform Act of 2018, which is classified principally to this chapter. For complete classification of subtitle B to the Code, see section 1741 of Pub. L. 115-232, set out as a Short Title note below and Tables.

Subchapter I, referred to in pars. (1), (3), (4)(B), (6), (9), and (13)(A), was in the original “part I”, meaning part I (§§ 1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to subchapter I of

this chapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note below and Tables.

The International Emergency Economic Powers Act, referred to in par. (4)(A), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

Statutory Notes and Related Subsidiaries

SHORT TITLE

Pub. L. 115-232, div. A, title XVII, § 1741, Aug. 13, 2018, 132 Stat. 2208, provided that: “This subtitle [subtitle B (§§ 1741–1781) of title XVII of div. A of Pub. L. 115-232, enacting this chapter, amending section 5314 of Title 5, Government Organization and Employees, and section 2516 of Title 18, Crimes and Criminal Procedure, repealing sections 4601 to 4610 and 4614 to 4623 of this title, enacting provisions set out as notes under this section and section 4601 of this title, and repealing provisions set out as notes under sections 4601, 4606, and 4609 of this title and section 3108 of Title 22, Foreign Relations and Intercourse] may be cited as the ‘Export Control Reform Act of 2018’.”

Pub. L. 115-232, div. A, title XVII, § 1751, Aug. 13, 2018, 132 Stat. 2209, provided that: “This part [part I (§§ 1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, enacting subchapter I of this chapter, amending section 2516 of Title 18, Crimes and Criminal Procedure, repealing sections 4601 to 4610 and 4614 to 4623 of this title, enacting provisions set out as notes under section 4601 of this title, and repealing provisions set out as notes under sections 4601, 4606, and 4609 of this title and section 3108 of Title 22, Foreign Relations and Intercourse] may be cited as the ‘Export Controls Act of 2018’.”

Pub. L. 115-232, div. A, title XVII, § 1771, Aug. 13, 2018, 132 Stat. 2234, provided that: “This part [part II (§§ 1771–1774) of subtitle B of title XVII of div. A of Pub. L. 115-232, enacting subchapter II of this chapter] may be cited as the ‘Anti-Boycott Act of 2018’.”

SUBCHAPTER I—AUTHORITY AND ADMINISTRATION OF CONTROLS

§ 4811. Statement of policy

The following is the policy of the United States:

(1) 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 items 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; and

(B) to restrict the export of items if necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations.

(2) The national security and foreign policy of the United States require that the export, reexport, and in-country transfer of items, and specific activities of United States persons, wherever located, be controlled for the following purposes:

(A) To control the release of items for use in—

(i) the proliferation of weapons of mass destruction or of conventional weapons;

(ii) the acquisition of destabilizing numbers or types of conventional weapons;

- (iii) acts of terrorism;
- (iv) military programs that could pose a threat to the security of the United States or its allies; or
- (v) activities undertaken specifically to cause significant interference with or disruption of critical infrastructure.

(B) To preserve the qualitative military superiority of the United States.

(C) To strengthen the United States defense industrial base.

(D) To carry out the foreign policy of the United States, including the protection of human rights and the promotion of democracy.

(E) To carry out obligations and commitments under international agreements and arrangements, including multilateral export control regimes.

(F) To facilitate military interoperability between the United States and its North Atlantic Treaty Organization (NATO) and other close allies.

(G) To ensure national security controls are tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States.

(3) The national security of the United States requires that the United States maintain its leadership in the science, technology, engineering, and manufacturing sectors, including foundational technology that is essential to innovation. Such leadership requires that United States persons are competitive in global markets. The impact of the implementation of this subchapter on such leadership and competitiveness must be evaluated on an ongoing basis and applied in imposing controls under sections 4812 and 4813 of this title to avoid negatively affecting such leadership.

(4) The national security and foreign policy of the United States require that the United States participate in multilateral organizations and agreements regarding export controls on items that are consistent with the policy of the United States, and take all the necessary steps to secure the adoption and consistent enforcement, by the governments of such countries, of export controls on items that are consistent with such policy.

(5) Export controls should be coordinated with the multilateral export control regimes. Export controls that are multilateral are most effective, and should be tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States and its allies.

(6) Export controls applied unilaterally to items widely available from foreign sources generally are less effective in preventing end-users from acquiring those items. Application of unilateral export controls should be limited for purposes of protecting specific United States national security and foreign policy interests.

(7) The effective administration of export controls requires a clear understanding both inside and outside the United States Govern-

ment of which items are controlled and an efficient process should be created to regularly update the controls, such as by adding or removing such items.

(8) The export control system must ensure that it is transparent, predictable, and timely, has the flexibility to be adapted to address new threats in the future, and allows seamless access to and sharing of export control information among all relevant United States national security and foreign policy agencies.

(9) Implementation and enforcement of United States export controls require robust capabilities in monitoring, intelligence, and investigation, appropriate penalties for violations, and the ability to swiftly interdict unapproved transfers.

(10) Export controls complement and are a critical element of the national security policies underlying the laws and regulations governing foreign direct investment in the United States, including controlling the transfer of critical technologies to certain foreign persons. Thus, the President, in coordination with the Secretary, the Secretary of Defense, the Secretary of State, the Secretary of Energy, and the heads of other Federal agencies, as appropriate, should have a regular and robust process to identify the emerging and other types of critical technologies of concern and regulate their release to foreign persons as warranted regardless of the nature of the underlying transaction. Such identification efforts should draw upon the resources and expertise of all relevant parts of the United States Government, industry, and academia. These efforts should be in addition to traditional efforts to modernize and update the lists of controlled items under the multilateral export control regimes.

(11) The authority under this subchapter may be exercised only in furtherance of all of the objectives set forth in paragraphs (1) through (10).

(Pub. L. 115-232, div. A, title XVII, §1752, Aug. 13, 2018, 132 Stat. 2210.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in pars. (3) and (11), was in the original “this part”, meaning part I (§§1751-1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

§ 4812. Authority of the President

(a) Authority

In order to carry out the policy set forth in paragraphs (1) through (10) of section 4811 of this title, the President shall control—

- (1) the export, reexport, and in-country transfer of items subject to the jurisdiction of the United States, whether by United States persons or by foreign persons; and
- (2) the activities of United States persons, wherever located, relating to specific—

- (A) nuclear explosive devices;

- (B) missiles;
- (C) chemical or biological weapons;
- (D) whole plants for chemical weapons precursors;
- (E) foreign maritime nuclear projects; and
- (F) foreign military, security, or intelligence services.

(b) Requirements

In exercising authority under this subchapter to carry out the policy set forth in paragraphs (1) through (10) of section 4811 of this title, the President shall—

- (1) regulate the export, reexport, and in-country transfer of items described in subsection (a)(1) of United States persons or foreign persons;
- (2) regulate the activities described in subsection (a)(2) of United States persons, wherever located;
- (3) seek to secure the cooperation of other governments and multilateral organizations to impose control systems that are consistent, to the extent possible, with the controls imposed under subsection (a);
- (4) maintain the leadership of the United States in science, engineering, technology research and development, manufacturing, and foundational technology that is essential to innovation;
- (5) protect United States technological advances by prohibiting unauthorized technology transfers to foreign persons in the United States or outside the United States, particularly with respect to countries that may pose a significant threat to the national security of the United States;
- (6) strengthen the United States industrial base, both with respect to current and future defense requirements; and
- (7) enforce the controls through means such as regulations, requirements for compliance, lists of controlled items, lists of foreign persons who threaten the national security or foreign policy of the United States, and guidance in a form that facilitates compliance by United States persons and foreign persons, in particular academic institutions, scientific and research establishments, and small- and medium-sized businesses.

(c) Application of controls

The President shall impose controls over the export, reexport, or in-country transfer of items for purposes of the objectives described in subsections (b)(1) or (b)(2) without regard to the nature of the underlying transaction or any circumstances pertaining to the activity, including whether such export, reexport, or in-country transfer occurs pursuant to a purchase order or other contract requirement, voluntary decision, inter-company arrangement, marketing effort, or during a joint venture, joint development agreement, or similar collaborative agreement.

(Pub. L. 115-232, div. A, title XVII, § 1753, Aug. 13, 2018, 132 Stat. 2211; Pub. L. 117-263, div. E, title LV, § 5589(b), Dec. 23, 2022, 136 Stat. 3380.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original “this part”, meaning part I (§§ 1751–1768) of sub-

title B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

AMENDMENTS

2022—Subsec. (a)(2)(F). Pub. L. 117-263 inserted “, security, or” before “intelligence”.

§ 4813. Additional authorities

(a) In general

In carrying out this subchapter on behalf of the President, the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the heads of other Federal agencies as appropriate, shall—

- (1) establish and maintain a list of items that are controlled under this subchapter;
- (2) establish and maintain a list of foreign persons and end-uses that are determined to be a threat to the national security and foreign policy of the United States pursuant to the policy set forth in section 4811(2)(A) of this title;
- (3) prohibit unauthorized exports, reexports, and in-country transfers of controlled items, including to foreign persons in the United States or outside the United States;
- (4) restrict exports, reexports, and in-country transfers of any controlled items to any foreign person or end-use listed under paragraph (2);
- (5) require licenses or other authorizations, as appropriate, for exports, reexports, and in-country transfers of controlled items, including—
 - (A) imposing conditions or restrictions on United States persons and foreign persons with respect to such licenses or other authorizations; and
 - (B) suspending or revoking such licenses or authorizations;
- (6) establish a process for an assessment to determine whether a foreign item is comparable in quality to an item controlled under this subchapter, and is available in sufficient quantities to render the United States export control of that item or the denial of a license ineffective, including a mechanism to address that disparity;

(7) require measures for compliance with the export controls established under this subchapter;

(8) require and obtain such information from United States persons and foreign persons as is necessary to carry out this subchapter;

(9) require, to the extent feasible, identification of items subject to controls under this subchapter in order to facilitate the enforcement of such controls;

(10) inspect, search, detain, or seize, or impose temporary denial orders with respect to items, in any form, that are subject to controls under this subchapter, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported, reexported, or in-country transferred in violation of this subchapter;

(11) monitor shipments and other means of transfer;

(12) keep the public appropriately apprised of changes in policy, regulations, and procedures established under this subchapter;

(13) appoint technical advisory committees in accordance with the Federal Advisory Committee Act;

(14) create, as warranted, exceptions to licensing requirements in order to further the objectives of this subchapter;

(15) establish and maintain processes to inform persons, either individually by specific notice or through amendment to any regulation or order issued under this subchapter, that a license from the Bureau of Industry and Security of the Department of Commerce is required to export; and

(16) undertake any other action as is necessary to carry out this subchapter that is not otherwise prohibited by law.

(b) Relationship to IEEPA

The authority under this subchapter may not be used to regulate or prohibit under this subchapter the export, reexport, or in-country transfer of any item that may not be regulated or prohibited under section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), except to the extent the President has made a determination necessary to impose controls under subparagraph (A), (B), or (C) of paragraph (2) of such section.

(c) Countries supporting international terrorism

(1) Commerce license requirement

(A) In general

A license shall be required for the export, reexport, or in-country transfer of items, the control of which is implemented pursuant to subsection (a) by the Secretary, to a country if the Secretary of State has made the following determinations:

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

(ii) The export, reexport, or in-country transfer of such items 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.

(B) Determination under other provisions of law

A determination of the Secretary of State under section 2371 of title 22, section 2780 of title 22, or any other provision of law that the government of a country described in subparagraph (A) has repeatedly provided support for acts of international terrorism shall be deemed to be a determination with respect to such government for purposes of clause (i) of subparagraph (A).

(2) Notification to Congress

(A) In general

The Secretary of State and the Secretary 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 Rela-

tions of the Senate at least 30 days before any license is issued as required by paragraph (1).

(B) Contents

The Secretary of State shall include in the notification required under subparagraph (A)—

(i) a detailed description of the items to be offered, including a brief description of the capabilities of any item for which a license to export, reexport, or in-country transfer the items is sought;

(ii) the reasons why the foreign country, person, or entity to which the export, reexport, or in-country transfer is proposed to be made has requested the items under the export, reexport, or in-country transfer, and a description of the manner in which such country, person, or entity intends to use such items;

(iii) the reasons why the proposed export, reexport, or in-country transfer is in the national interest of the United States;

(iv) an analysis of the impact of the proposed export, reexport, or in-country transfer on the military capabilities of the foreign country, person, or entity to which such transfer would be made;

(v) an analysis of the manner in which the proposed export, reexport, or in-country transfer would affect the relative military strengths of countries in the region to which the items that are the subject of such export, reexport, or in-country transfer would be delivered and whether other countries in the region have comparable kinds and amounts of items; and

(vi) an analysis of the impact of the proposed export, reexport, or in-country transfer on the relations of the United States with the countries in the region to which the items that are the subject of such export, reexport, or in-country transfer would be delivered.

(3) Publication in Federal Register

Each determination of the Secretary of State under paragraph (1)(A)(i) shall be published in the Federal Register, except that the Secretary of State may exclude confidential information and trade secrets contained in such determination.

(4) Rescission of determination

A determination of the Secretary of State under paragraph (1)(A)(i) may not be rescinded unless the President submits to the Speaker of the House of Representatives, the chairman of the Committee on Foreign Affairs, 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 acts 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.

(d) Enhanced controls

(1) In general

In furtherance of section 4812(a) of this title, the President shall, except to the extent authorized by a statute or regulation administered by a Federal department or agency other than the Department of Commerce, require a United States person, wherever located, to apply for and receive a license from the Department of Commerce for—

- (A) the export, reexport, or in-country transfer of items described in paragraph (2), including items that are not subject to control under this subchapter; and
- (B) other activities that may support the design, development, production, use, operation, installation, maintenance, repair, overhaul, or refurbishing of, or for the performance of services relating to, any such items.

(2) Items described

The items described in this paragraph include—

- (A) nuclear explosive devices;
- (B) missiles;
- (C) chemical or biological weapons;
- (D) whole plants for chemical weapons precursors; and
- (E) foreign maritime nuclear projects that would pose a risk to the national security or foreign policy of the United States.

(e) Additional prohibitions

The Secretary may inform United States persons, either individually by specific notice or through amendment to any regulation or order issued under this subchapter, that a license from the Bureau of Industry and Security of the Department of Commerce is required to engage in any activity if the activity involves the types of movement, service, or support described in subsection (d). The absence of any such notification does not excuse the United States person from compliance with the license requirements of subsection (d), or any regulation or order issued under this subchapter.

(f) License review standards

The Secretary shall deny an application to engage in any activity described in subsection (d) if the activity would make a material contribution to any of the items described in subsection (d)(2).

(Pub. L. 115-232, div. A, title XVII, § 1754, Aug. 13, 2018, 132 Stat. 2212.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b), (d)(1)(A), and (e), was in the original “this part”, mean-

ing part I (§§ 1751-1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (a)(13), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in chapter 10 (§ 1001 et seq.) of Title 5 by Pub. L. 117-286, §§ 3(a), 7, Dec. 27, 2022, 136 Stat. 4197, 4361. For disposition of sections of the Act into chapter 10 of Title 5, see Disposition Table preceding section 101 of Title 5.

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

§ 4814. Administration of export controls

(a) In general

The President shall rely on, including through delegations, as appropriate, the Secretary, the Secretary of Defense, the Secretary of State, the Secretary of Energy, the Director of National Intelligence, and the heads of other Federal agencies as appropriate, to exercise the authority to carry out the purposes set forth in subsection (b).

(b) Purposes

The purposes of this section include to—

- (1) advise the President with respect to—

- (A) identifying specific threats to the national security and foreign policy that the authority of this subchapter may be used to address; and

- (B) exercising the authority under this subchapter to implement policies, regulations, procedures, and actions that are necessary to effectively counteract those threats;

- (2) review and approve—

- (A) criteria for including items on, and removing such an item from, a list of controlled items established under this subchapter;

- (B) an interagency procedure for compiling and amending any list described in subparagraph (A);

- (C) criteria for including a person on a list of persons to whom exports, reexports, and in-country transfers of items are prohibited or restricted under this subchapter;

- (D) standards for compliance by persons subject to controls under this subchapter; and

- (E) policies and procedures for the end-use monitoring of exports, reexports, and in-country transfers of items controlled under this subchapter; and

- (3) benefit from the inherent equities, experience, and capabilities of the Federal officials described in subsection (a).

(c) Sense of Congress

It is the sense of Congress that the administration of export controls under this subchapter

should be consistent with the procedures relating to export license applications described in Executive Order 12981 (1995).

(Pub. L. 115–232, div. A, title XVII, § 1755, Aug. 13, 2018, 132 Stat. 2216.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (b)(1), (2) and (c), was in the original “this part”, meaning part I (§§ 1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115–232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115–232, set out as a Short Title note under section 4801 of this title and Tables.

Executive Order 12981, referred to in subsec. (c), is Ex. Ord. No. 12981, Dec. 5, 1995, 60 F.R. 62981, which is set out as a note under former section 4603 of this title.

§ 4815. Licensing

(a) In general

The Secretary shall, consistent with delegations as described in section 4814 of this title, establish a procedure to license or otherwise authorize the export, reexport, and in-country transfer of items controlled under this subchapter in order to carry out the policy set forth in section 4811 of this title and the requirements set forth in section 4812(b) of this title. The procedure shall ensure that—

(1) license applications and other requests for authorization are considered and decisions made with the participation of appropriate Federal agencies, as appropriate; and

(2) licensing decisions are made in an expeditious manner, with transparency to applicants on the status of license and other authorization processing and the reason for denying any license or request for authorization.

(b) Sense of Congress

It is the sense of Congress that the Secretary should make best efforts to ensure that an accurate, consistent, and timely evaluation and processing of licenses or other requests for authorization to export, reexport, or in-country transfer items controlled under this subchapter is generally accomplished within 30 days from the date of such license request.

(c) Fees

No fee may be charged in connection with the submission, processing, or consideration of any application for a license or other authorization or other request made in connection with any regulation in effect under the authority of this subchapter.

(d) Additional procedural requirements

(1) In general

The procedure required under subsection (a) shall provide for the assessment of the impact of a proposed export of an item on the United States defense industrial base and the denial of an application for a license or a request for an authorization of any export that would have a significant negative impact on such defense industrial base, as described in paragraph (3).

(2) Information from applicant

The procedure required under subsection (a) shall also require an applicant for a license to

provide the information necessary to make the assessment provided under paragraph (1), including whether the purpose or effect of the export is to allow for the significant production of items relevant for the defense industrial base outside the United States.

(3) Significantly negative impact defined

A significant negative impact on the United States defense industrial base is the following:

(A) A reduction in the availability of an item produced in the United States that is likely to be acquired by the Department of Defense or other Federal department or agency for the advancement of the national security of the United States, or for the production of an item in the United States for the Department of Defense or other agency for the advancement of the national security of the United States.

(B) A reduction in the production in the United States of an item that is the result of research and development carried out, or funded by, the Department of Defense or other Federal department or agency to advance the national security of the United States, or a federally funded research and development center.

(C) A reduction in the employment of United States persons whose knowledge and skills are necessary for the continued production in the United States of an item that is likely to be acquired by the Department of Defense or other Federal department or agency for the advancement of the national security of the United States.

(Pub. L. 115–232, div. A, title XVII, § 1756, Aug. 13, 2018, 132 Stat. 2217.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) to (c), was in the original “this part”, meaning part I (§§ 1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115–232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115–232, set out as a Short Title note under section 4801 of this title and Tables.

§ 4816. Compliance assistance

(a) System for seeking assistance

The President may authorize the Secretary to establish a system to provide United States persons with assistance in complying with this subchapter, which may include a mechanism for providing information, in classified form as appropriate, to persons who are potential customers, suppliers, or business partners with respect to items controlled under this subchapter, in order to further ensure the prevention of the export, reexport, or in-country transfer of items that may pose a threat to the national security or foreign policy of the United States.

(b) Security clearances

In order to carry out subsection (a), the President may issue appropriate security clearances to persons described in that subsection who are responsible for complying with this subchapter.

(c) Assistance for certain businesses**(1) In general**

Not later than 120 days after August 13, 2018, the President shall develop and submit to Congress a plan to assist small- and medium-sized United States businesses in export licensing and other processes under this subchapter.

(2) Contents

The plan shall include, among other things, arrangements for the Department of Commerce to provide counseling to businesses described in paragraph (1) on filing applications and identifying items controlled under this subchapter, as well as proposals for seminars and conferences to educate such businesses on export controls, licensing procedures, and related obligations.

(Pub. L. 115–232, div. A, title XVII, § 1757, Aug. 13, 2018, 132 Stat. 2218; Pub. L. 116–283, div. A, title X, § 1081(d)(7), Jan. 1, 2021, 134 Stat. 3874.)

Editorial Notes**REFERENCES IN TEXT**

This subchapter, referred to in text, was in the original “this part”, meaning part I (§§ 1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115–232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115–232, set out as a Short Title note under section 4801 of this title and Tables.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 inserted “to persons” before “who are potential”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2021 AMENDMENT**

Pub. L. 116–283, div. A, title X, § 1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(7) is effective as of Aug. 13, 2018, and as if included in Pub. L. 115–232.

Executive Documents**DELEGATION OF AUTHORITIES UNDER SECTION 1757 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2019**

Memorandum of President of the United States, Nov. 26, 2018, 83 F.R. 61503, provided:

Memorandum for the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Commerce the functions and authorities vested in the President by section 1757 of the [John S. McCain] National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) [50 U.S.C. 4816].

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as the provision referenced in this memorandum.

You are authorized and directed to publish this memorandum in the Federal Register.

DONALD J. TRUMP.

§ 4817. Requirements to identify and control the export of emerging and foundational technologies**(a) Identification of technologies****(1) In general**

The President shall establish and, in coordination with the Secretary, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the heads of other Federal agencies as appropriate, lead, a regular, ongoing interagency process to identify emerging and foundational technologies that—

(A) are essential to the national security of the United States; and

(B) are not critical technologies described in clauses (i) through (v) of section 4565(a)(6)(A) of this title.

(2) Process

The interagency process established under subsection (a) shall—

(A) be informed by multiple sources of information, including—

(i) publicly available information;

(ii) classified information, including relevant information provided by the Director of National Intelligence;

(iii) information relating to reviews and investigations of transactions by the Committee on Foreign Investment in the United States under section 4565 of this title; and

(iv) information provided by the advisory committees established by the Secretary to advise the Under Secretary of Commerce for Industry and Security on controls under the Export Administration Regulations, including the Emerging Technology and Research Advisory Committee;

(B) take into account—

(i) the development of emerging and foundational technologies in foreign countries;

(ii) the effect export controls imposed pursuant to this section may have on the development of such technologies in the United States; and

(iii) the effectiveness of export controls imposed pursuant to this section on limiting the proliferation of emerging and foundational technologies to foreign countries; and

(C) include a notice and comment period.

(b) Commerce controls**(1) In general**

Except to the extent inconsistent with the authorities described in subsection (a)(1)(B), the Secretary shall establish appropriate controls under the Export Administration Regulations on the export, reexport, or in-country transfer of technology identified pursuant to subsection (a), including through interim controls (such as by informing a person that a license is required for export), as appropriate, or by publishing additional regulations.

(2) Levels of control**(A) In general**

The Secretary may, in coordination with the Secretary of Defense, the Secretary of

State, and the heads of other Federal agencies, as appropriate, specify the level of control to apply under paragraph (1) with respect to the export of technology described in that paragraph, including a requirement for a license or other authorization for the export, reexport, or in-country transfer of that technology.

(B) Considerations

In determining under subparagraph (A) the level of control appropriate for technology described in paragraph (1), the Secretary shall take into account—

- (i) lists of countries to which exports from the United States are restricted; and
- (ii) the potential end uses and end users of the technology.

(C) Minimum requirements

At a minimum, except as provided by paragraph (4), the Secretary shall require a license for the export, reexport, or in-country transfer of technology described in paragraph (1) to or in a country subject to an embargo, including an arms embargo, imposed by the United States.

(3) Review of license applications

(A) Procedures

The procedures set forth in Executive Order 12981 (50 U.S.C. 4603 note; relating to administration of export controls) or a successor order shall apply to the review of an application for a license or other authorization for the export, reexport, or in-country transfer of technology described in paragraph (1).

(B) Consideration of information relating to national security

In reviewing an application for a license or other authorization for the export, reexport, or in-country transfer of technology described in paragraph (1), the Secretary shall take into account information provided by the Director of National Intelligence regarding any threat to the national security of the United States posed by the proposed export, reexport, or transfer. The Director of National Intelligence shall provide such information on the request of the Secretary.

(C) Disclosures relating to collaborative arrangements

In the case of an application for a license or other authorization for the export, reexport, or in-country transfer of technology described in paragraph (1) submitted by or on behalf of a joint venture, joint development agreement, or similar collaborative arrangement, the Secretary may require the applicant to identify, in addition to any foreign person participating in the arrangement, any foreign person with significant ownership interest in a foreign person participating in the arrangement.

(4) Exceptions

(A) Mandatory exceptions

The Secretary may not control under this subsection the export of any technology—

(i) described in section 1702(b) of this title; or

(ii) if the regulation of the export of that technology is prohibited under any other provision of law.

(B) Regulatory exceptions

In prescribing regulations under paragraph (1), the Secretary may include regulatory exceptions to the requirements of that paragraph.

(C) Additional exceptions

The Secretary shall not be required to impose under paragraph (1) a requirement for a license or other authorization with respect to the export, reexport, or in-country transfer of technology described in paragraph (1) pursuant to any of the following transactions:

(i) The sale or license of a finished item and the provision of associated technology if the United States person that is a party to the transaction generally makes the finished item and associated technology available to its customers, distributors, or resellers.

(ii) The sale or license to a customer of a product and the provision of integration services or similar services if the United States person that is a party to the transaction generally makes such services available to its customers.

(iii) The transfer of equipment and the provision of associated technology to operate the equipment if the transfer could not result in the foreign person using the equipment to produce critical technologies (as defined in section 4565(a) of this title).

(iv) The procurement by the United States person that is a party to the transaction of goods or services, including manufacturing services, from a foreign person that is a party to the transaction, if the foreign person has no rights to exploit any technology contributed by the United States person other than to supply the procured goods or services.

(v) Any contribution and associated support by a United States person that is a party to the transaction to an industry organization related to a standard or specification, whether in development or declared, including any license of or commitment to license intellectual property in compliance with the rules of any standards organization (as defined by the Secretary by regulation).

(c) Multilateral controls

(1) In general

The Secretary of State, in consultation with the Secretary and the Secretary of Defense, and the heads of other Federal agencies, as appropriate, shall propose that any technology identified pursuant to subsection (a) be added to the list of technologies controlled by the relevant multilateral export control regimes.

(2) Items on commerce control list or United States munitions list

If the Secretary of State proposes to a multilateral export control regime under para-

graph (1) to add a technology identified pursuant to subsection (a) to the control list of that regime and that regime does not add that technology to the control list during the 3-year period beginning on the date of the proposal, the applicable agency head may determine whether national security concerns warrant the continuation of unilateral export controls with respect to that technology.

(d) Report to Committee on Foreign Investment in the United States

Not less frequently than every 180 days, the Secretary, in coordination with the Secretary of Defense, the Secretary of State, and the heads of other Federal agencies, as appropriate, shall submit to the Committee on Foreign Investment in the United States a report on the results of actions taken pursuant to this section.

(e) Report to Congress

Not less frequently than every 180 days, the Secretary, in coordination with the Secretary of Defense, the Secretary of State, and the heads of other Federal agencies, as appropriate, shall submit a report on the results of actions taken pursuant to this section, including actions taken pursuant to subsections (a), (b), and (c), to—

(1) the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Financial Services, the Committee on Foreign Affairs, the Committee on Armed Services, and the Permanent Select Committee on Intelligence of the House of Representatives.

(f) Modifications to Emerging Technology and Research Advisory Committee

(1) In general

The Secretary shall revise the objectives of the Emerging Technology and Research Advisory Committee, established by the Secretary under the Export Administration Regulations, to include advising the interagency process established under subsection (a) with respect to emerging and foundational technologies.

(2) Duties

The Secretary—

(A) shall revise the duties of the Emerging Technology and Research Advisory Committee to include identifying emerging and foundational technologies that may be developed over a period of 5 years or 10 years; and

(B) may revise the duties of the Advisory Committee to include identifying trends in—

(i) the ownership by foreign persons and foreign governments of such technologies;

(ii) the types of transactions related to such technologies engaged in by foreign persons and foreign governments;

(iii) the blending of private and government investment in such technologies; and

(iv) efforts to obfuscate ownership of such technologies or to otherwise circumvent the controls established under this section.

(3) Meetings

(A) Frequency

The Emerging Technology and Research Advisory Committee should meet not less frequently than every 120 days.

(B) Attendance

A representative from each agency participating in the interagency process established under subsection (a) should be in attendance at each meeting of the Emerging Technology and Research Advisory Committee.

(4) Classified information

Not fewer than half of the members of the Emerging Technology and Research Advisory Committee should hold sufficient security clearances such that classified information, including classified information described in clauses (ii) and (iii) of subsection (a)(2)(A), from the interagency process established under subsection (a) can be shared with those members to inform the advice provided by the Advisory Committee.

(5) Applicability of Federal Advisory Committee Act

Subsections (a)(1), (a)(3), and (b) of section 10 and sections 11, 13, and 14 of the Federal Advisory Committee Act (5 U.S.C. App.)¹ shall not apply to the Emerging Technology and Research Advisory Committee.

(6) Report

The Emerging Technology and Research Advisory Committee shall include the findings of the Advisory Committee under this subsection in the annual report to Congress required by section 4824 of this title.

(g) Rule of Construction

Nothing in this chapter shall be construed to alter or limit—

(1) the authority of the President or the Secretary of State to designate items as defense articles and defense services for the purposes of the Arms Export Control Act (22 U.S.C. 2751 et seq.) or to otherwise regulate such items; or

(2) the authority of the President under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3201 et seq.), the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), or the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)) or any other provision of law relating to the control of exports.

(Pub. L. 115-232, div. A, title XVII, §1758, Aug. 13, 2018, 132 Stat. 2218.)

Editorial Notes

REFERENCES IN TEXT

Executive Order 12981, referred to in subsec. (b)(3)(A), is Ex. Ord. No. 12981, Dec. 5, 1995, 60 F.R. 62981, which is set out as a note under former section 4603 of this title.

¹ See References in Text note below.

The Federal Advisory Committee Act, referred to in subsec. (f)(5), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in chapter 10 (§ 1001 et seq.) of Title 5 by Pub. L. 117-286, §§ 3(a), 7, Dec. 27, 2022, 136 Stat. 4197, 4361. Sections 10, 11, 13, and 14 of the Act were repealed and restated as sections 1009, 1010, 1012, and 1013, respectively, of Title 5. For disposition of sections of the Act into chapter 10 of Title 5, see Disposition Table preceding section 101 of Title 5.

This chapter, referred to in subsec. (g), was in the original “this subtitle”, meaning subtitle B (§§ 1741-1781) of title XVII of div. A of Pub. L. 115-232, Aug. 13, 2018, 132 Stat. 2208, known as the Export Control Reform Act of 2018, which is classified principally to this chapter. For complete classification of subtitle B to the Code, see section 1741 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

The Arms Export Control Act, referred to in subsec. (g)(1), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, which is classified principally to chapter 39 (§ 2751 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 2751 of Title 22 and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (g)(2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 919, which is classified principally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

The Nuclear Non-Proliferation Act of 1978, referred to in subsec. (g)(2), is Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 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 3201 of Title 22 and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (g)(2), is Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, which is classified principally to chapter 73 (§ 5801 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of Title 42 and Tables.

The Export Administration Act of 1979, referred to in subsec. (g)(2), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to chapter 56 (§ 4601 et seq.) of this title and was substantially repealed by Pub. L. 115-232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in subsec. (g)(2), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

§ 4818. Review relating to countries subject to comprehensive United States arms embargo

(a) In general

The Secretary, the Secretary of Defense, the Secretary of State, the Secretary of Energy, and the heads of other Federal agencies as appropriate, shall conduct a review of license requirements for exports, reexports, or in-country transfers of items to countries subject to a comprehensive United States arms embargo, including, as appropriate—

- (1) the scope of controls under title 15, Code of Federal Regulations, that apply to exports, reexports, and in-country transfers for military end uses and military end users in coun-

tries that are subject to a comprehensive United States arms embargo and countries that are subject to a United Nations arms embargo; and

- (2) entries on the Commerce Control List maintained under title 15, Code of Federal Regulations, that are not subject to a license requirement for the export, reexport, or in-country transfer of items to countries subject to a comprehensive United States arms embargo.

(b) Implementation of results of review

Not later than 270 days after August 13, 2018, the Secretary shall implement the results of the review conducted under subsection (a).

(Pub. L. 115-232, div. A, title XVII, § 1759, Aug. 13, 2018, 132 Stat. 2223; Pub. L. 116-283, div. A, title X, § 1081(d)(8), Jan. 1, 2021, 134 Stat. 3874.)

Editorial Notes

AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116-283 substituted period for semicolon at end.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116-283, div. A, title X, § 1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(8) is effective as of Aug. 13, 2018, and as if included in Pub. L. 115-232.

§ 4819. Penalties

(a) Unlawful acts

(1) In general

It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of this subchapter or of any regulation, order, license, or other authorization issued under this subchapter, including any of the unlawful acts described in paragraph (2).

(2) Specific unlawful acts

The unlawful acts described in this paragraph are the following:

- (A) No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder.

- (B) No person may cause or aid, abet, counsel, command, induce, procure, permit, or approve the doing of any act prohibited, or the omission of any act required by this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder.

- (C) No person may solicit or attempt a violation of this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder.

- (D) No person may conspire or act in concert with one or more other persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(E) No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, or conduct negotiations to facilitate such activities for, any item exported or to be exported from the United States, or that is otherwise subject to the Export Administration Regulations, with knowledge that a violation of this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item unless valid authorization is obtained therefor.

(F) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to the Department of Commerce, or an official of any other United States agency, including the Department of Homeland Security and the Department of Justice, or indirectly through any other person—

(i) in the course of an investigation or other action subject to the Export Administration Regulations;

(ii) in connection with the preparation, submission, issuance, use, or maintenance of any export control document or any report filed or required to be filed pursuant to the Export Administration Regulations; or

(iii) for the purpose of or in connection with effecting any export, reexport, or in-country transfer of an item subject to the Export Administration Regulations or a service or other activity of a United States person described in section 4813 of this title.

(G) No person may engage in any transaction or take any other action with intent to evade the provisions of this subchapter, the Export Administration Regulations, or any order, license, or authorization issued thereunder.

(H) No person may fail or refuse to comply with any reporting or recordkeeping requirements of the Export Administration Regulations or of any order, license, or authorization issued thereunder.

(I) Except as specifically authorized in the Export Administration Regulations or in writing by the Department of Commerce, no person may alter any license, authorization, export control document, or order issued under the Export Administration Regulations.

(J) No person may take any action that is prohibited by a denial order or a temporary denial order issued by the Department of Commerce to prevent imminent violations of this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(3) Additional requirements

For purposes of paragraph (2)(F), any representation, statement, or certification made by any person shall be deemed to be continuing in effect. Each person who has made a

representation, statement, or certification to the Department of Commerce relating to any order, license, or other authorization issued under this subchapter shall notify the Department of Commerce, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention had occurred or may occur in the future.

(b) Criminal penalty

A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids and abets in the commission of, an unlawful act described in subsection (a)—

(1) shall be fined not more than \$1,000,000; and

(2) in the case of the individual, shall be imprisoned for not more than 20 years, or both.

(c) Civil penalties

(1) Authority

The Secretary may impose the following civil penalties on a person for each violation by that person of this subchapter or any regulation, order, or license issued under this subchapter, for each violation:

(A) A fine of not more than \$300,000 or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

(B) Revocation of a license issued under this subchapter to the person.

(C) A prohibition on the person's ability to export, reexport, or in-country transfer any items controlled under this subchapter.

(2) Procedures

Any civil penalty under this subsection 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.

(3) Standards for levels of civil penalty

The Secretary may by regulation provide standards for establishing levels of civil penalty under this subsection based upon factors such as the seriousness of the violation, the culpability of the violator, and such mitigating factors as the violator's record of cooperation with the Government in disclosing the violation.

(d) Criminal forfeiture

(1) In general

Any person who is convicted under subsection (b) of a violation of a control imposed under section 4812 of this title (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States any of the person's property—

(A) used or intended to be used, in any manner, to commit or facilitate the violation;

(B) constituting or traceable to the gross proceeds taken, obtained, or retained, in connection with or as a result of the violation; or

(C) constituting an item or technology that is exported or intended to be exported in violation of this subchapter.¹

(2) Procedures

The procedures in any forfeiture under this subsection shall be governed by the procedures established under section 853 of title 21, other than subsection (d) of such section.

(e) Prior convictions

(1) License bar

(A) In general

The Secretary may—

(i) deny the eligibility of any person convicted of a criminal violation described in subparagraph (B) to export, reexport, or in-country transfer outside the United States any item, whether or not subject to controls under this subchapter, for a period of up to 10 years beginning on the date of the conviction; and

(ii) revoke any license or other authorization to export, reexport, or in-country transfer items that was issued under this subchapter and in which such person has an interest at the time of the conviction.

(B) Violations

The violations referred to in subparagraph (A) are any criminal violations of, or criminal attempt or conspiracy to violate—

(i) this subchapter (or any regulation, license, or order issued under this subchapter);

(ii) any regulation, license, or order issued under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.];

(iii) section 371, 554, 793, 794, or 798 of title 18;

(iv) section 1001 of title 18;

(v) section 783(b) of this title; or

(vi) section 2778 of title 22.

(2) Application to other parties

The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or business, 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 procedures set forth in subsection (c)(2).

(f) Other authorities

Nothing in subsection (c), (d), or (e) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this subchapter, or any regulation, order, license or other authorization issued under this subchapter;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this subchapter, or any regulation, order, license, or other authorization issued under this subchapter; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 401(b) of title 22.

(Pub. L. 115–232, div. A, title XVII, §1760, Aug. 13, 2018, 132 Stat. 2223.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (c)(1), (e)(1), and (f)(1), (2), was in the original “this part”, meaning part I (§§1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115–232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115–232, set out as a Short Title note under section 4801 of this title and Tables.

This subchapter, referred to in subsec. (d)(1)(C), was in the original “this title”, and was translated as meaning part I (§§1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115–232, which is classified principally to this subchapter, to reflect the probable intent of Congress. For complete classification of part I to the Code, see section 1751 of Pub. L. 115–232, set out as a Short Title note under section 4801 of this title and Tables.

The International Emergency Economic Powers Act, referred to in subsec. (e)(1)(B)(ii), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

§ 4820. Enforcement

(a) Authorities

In order to enforce this subchapter, the Secretary, on behalf of the President, may exercise, in addition to relevant enforcement authorities of other Federal agencies, the authority to—

(1) issue orders and guidelines;

(2) require, inspect, and obtain books, records, and any other information from any person subject to the provisions of this subchapter;

(3) administer oaths or affirmations and by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both;

(4) conduct investigations within the United States and outside the United States consistent with applicable law;

(5) inspect, search, detain, seize, or issue temporary denial orders with respect to items, in any form, that are subject to controls under this subchapter, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported, reexported, or in-country transferred in violation of this subchapter, or any regulations, order, license, or other authorization issued thereunder;

(6) carry firearms;

(7) conduct preclearance inspections and post-shipment verifications; and

(8) execute warrants and make arrests.

(b) Undercover investigations

(1) In general

Amounts made available to carry out this subchapter may be used by the Secretary to carry out undercover investigations that are necessary for detection and prosecution of violations of this subchapter, including to—

(A) purchase property, buildings, and other facilities, and to lease space, within the

¹ See References in Text note below.

United States, the District of Columbia, and the territories and possessions of the United States without regard to—

- (i) sections 1341 and 3324 of title 31;
- (ii) section 8141 of title 40;
- (iii) sections 3901, 6301(a) and (b)(1) to (3), and 6306 of title 41; and
- (iv) chapter 45 of title 41; and

(B) establish or acquire proprietary corporations or business entities as part of the undercover operation and operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31.

(2) Deposit of amounts in banks or other financial institutions

Amounts made available to carry out this subchapter that are used to carry out undercover operations under paragraph (1) may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18 and section 3302 of title 31.

(3) Offset of necessary and reasonable expenses

Any proceeds from an undercover operation carried out under paragraph (1) may be used to offset necessary and reasonable expenses incurred in such undercover operation without regard to the provisions of section 3302 of title 31.

(4) Disposition of corporations and business entities

If a corporation or business entity established or acquired as part of an undercover operation carried out under paragraph (1) with a net value of over \$50,000 is to be liquidated, sold, or otherwise disposed of, the Secretary shall report the circumstances to the Comptroller General of the United States as much in advance of such disposition as the Secretary determines is practicable. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts. Any property or equipment purchased pursuant to paragraph (1) may be retained for subsequent use in undercover operations under this section. When such property or equipment is no longer needed, it shall be considered surplus and disposed of as surplus government property.

(5) Deposit of proceeds

As soon as the proceeds from an undercover operation carried out under paragraph (1), with respect to which an action is certified and carried out under this subsection, are no longer needed for the conduct of such operation, the proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Enforcement of subpoenas

In the case of contumacy by, or refusal to obey a subpoena issued to, any person under subsection (a)(3), a district court of the United States, after notice to such person and a hearing, shall have jurisdiction to issue an order re-

quiring such person to appear and give testimony or to appear and produce books, records, and other writings, regardless of format, that are the subject of the subpoena. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Best practice guidelines

(1) In general

The Secretary, in consultation with the heads of other appropriate Federal agencies, should publish and update “best practices” guidelines to assist persons in developing and implementing, on a voluntary basis, effective export control programs in compliance with the regulations issued under this subchapter.

(2) Export compliance program

The implementation by a person of an effective export compliance program and a high quality overall export compliance effort by a person should ordinarily be given weight as mitigating factors in a civil penalty action against the person under this subchapter.

(e) Reference to enforcement

For purposes of this section, a reference to the enforcement of, or a violation of, this subchapter includes a reference to the enforcement or a violation of any regulation, order, license or other authorization issued pursuant to this subchapter.

(f) Omitted

(g) Immunity

A person shall not be excused from complying with any requirements under this section because of the person’s privilege against self-incrimination, but the immunity provisions of section 6002 of title 18 shall apply with respect to any individual who specifically claims such privilege.

(h) Confidentiality of information

(1) Exemptions from disclosure

(A) In general

Information obtained under this subchapter may be withheld from disclosure only to the extent permitted by statute, except that information described in subparagraph (B) shall be withheld from public disclosure and shall not be subject to disclosure under section 552(b)(3) of title 5, unless the release of such information is determined by the Secretary to be in the national interest.

(B) Information described

Information described in this subparagraph is information submitted or obtained in connection with an application for a license or other authorization to export, reexport, or in-country transfer items or engage in other activities, a recordkeeping or reporting requirement, an enforcement activity, or other operations under this subchapter, including—

- (i) the license application, license, or other authorization itself;
- (ii) classification or advisory opinion requests, and the response thereto;
- (iii) license determinations, and information pertaining thereto;

- (iv) information or evidence obtained in the course of any investigation; and
- (v) information obtained or furnished in connection with any international agreement, treaty, or other obligation.

(2) Information to the Congress and GAO

(A) In general

Nothing in this section shall be construed as authorizing the withholding of information from the Congress or from the Government Accountability Office.

(B) Availability to the Congress

(i) In general

Any information obtained at any time under any provision of the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as in effect on the day before August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), under the Export Administration Regulations, or under this subchapter, including any report or license application required under any such provision, shall be made available to a committee or subcommittee of Congress of appropriate jurisdiction, upon the request of the chairman or ranking minority member of such committee or subcommittee.

(ii) Prohibition on further disclosure

No such committee or subcommittee, or member thereof, may disclose any information made available under clause (i), that is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest.

(C) Availability to GAO

(i) In general

Information described in clause (i) of subparagraph (B) shall be subject to the limitations contained in section 716 of title 31.

(ii) Prohibition on further disclosure

An officer or employee of the Government Accountability Office may not disclose, except to the Congress in accordance with this paragraph, any such information that is submitted on a confidential basis or from which any individual can be identified.

(3) Information sharing

(A) In general

Any Federal official described in section 4814(a) of this title who obtains information that is relevant to the enforcement of this subchapter, including information pertaining to any investigation, shall furnish such information to each appropriate department, agency, or office with enforcement responsibilities under this section to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities.

(B) Exceptions

The provisions of this paragraph shall not apply to information subject to the restric-

tions set forth in section 9 of title 13, and return information, as defined in subsection (b) of section 6103 of title 26, may be disclosed only as authorized by that section.

(C) Exchange of information

The President shall ensure that the heads of departments, agencies, and offices with enforcement authorities under this subchapter, consistent with protection of law enforcement and its sources and methods—

(i) exchange any licensing and enforcement information with one another that is necessary to facilitate enforcement efforts under this section; and

(ii) consult on a regular basis with one another and with the head of other departments, agencies, and offices that obtain information subject to this paragraph, in order to facilitate the exchange of such information.

(D) Information sharing with Federal agencies

Licensing or enforcement information obtained under this subchapter may be shared with departments, agencies, and offices that do not have enforcement authorities under this subchapter on a case-by-case basis.

(i) Reporting requirements

In the administration of this section, reporting requirements shall be designed to reduce the cost of reporting, recordkeeping, and documentation to the extent consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(j) Civil forfeiture

(1) In general

Any property, real or personal, tangible or intangible, seized under subsection (a) by designated officers or employees shall be subject to forfeiture to the United States in accordance with applicable law.

(2) Procedures

Any seizure or forfeiture under this subsection shall be carried out in accordance with the procedures set forth in section 981 of title 18.

(k) Rule of construction

Nothing in this subchapter¹ shall be construed to limit or otherwise affect the enforcement authorities of the Department of Homeland Security which may also complement those set forth herein.

(Pub. L. 115–232, div. A, title XVII, §1761, Aug. 13, 2018, 132 Stat. 2226.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b)(1), (2), (d), (e), and (h), was in the original “this part”, meaning part I (§§1751–1768) of subtitle B of title XVII of div.

¹ See References in Text note below.

A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

The Export Administration Act of 1979, referred to in subsec. (h)(2)(B)(i), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to chapter 56 (§ 4601 et seq.) of this title and was substantially repealed by Pub. L. 115-232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in subsec. (h)(2)(B)(i), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

This subchapter, referred to in subsec. (k), was in the original “this Act”, and was translated as meaning part I (§§ 1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to this subchapter, as the probable intent of Congress. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

CODIFICATION

Section is comprised of section 1761 of Pub. L. 115-232. Subsec. (f) of section 1761 of Pub. L. 115-232 amended section 2516 of Title 18, Crimes and Criminal Procedure.

§ 4821. Administrative procedure

(a) In general

Except as provided in section 4819(c)(2) or 4843(c) of this title, the functions exercised under this subchapter shall not be subject to sections 551, 553 through 559, and 701 through 706 of title 5.

(b) Administrative law judges

(1) In general

The Secretary may—

(A) appoint administrative law judges, consistent with the provisions of section 3105 of title 5; and

(B) designate properly appointed administrative law judges from other Federal agencies who are provided to the Department of Commerce pursuant to a legally authorized interagency agreement.

(2) Limitation

An administrative law judge appointed or designated by the Secretary under paragraph (1) may preside only over proceedings of the Department of Commerce.

(c) Amendments to regulations

The President shall notify in advance the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives of any proposed amendments to the Export Administration Regulations with an explanation of the intent and rationale of such amendments.

(Pub. L. 115-232, div. A, title XVII, § 1762, Aug. 13, 2018, 132 Stat. 2231.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original “this part”, meaning part I (§§ 1751–1768) of sub-

title B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

§ 4822. Review of interagency dispute resolution process

(a) In general

The President shall review and evaluate the interagency export license referral, review, and escalation processes for dual-use items and munitions under the licensing jurisdiction of the Department of Commerce or any other Federal agency, as appropriate, to determine whether current practices and procedures are consistent with established national security and foreign policy objectives.

(b) Report

Not later than 180 days after August 13, 2018, the President shall submit to the appropriate congressional committees a report that contains the results of the review carried out under subsection (a).

(c) Operating Committee for Export Policy

In any case in which the Operating Committee for Export Policy established by Executive Order 12981 (December 5, 1995; relating to Administration of Export Controls) is meeting to conduct an interagency dispute resolution relating to applications for export licenses under the Export Administration Regulations, matters relating to jet engine hot section technology, commercial communication satellites, and emerging or foundational technology may be decided by majority vote.

(d) Appropriate congressional committees defined

In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and

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

(Pub. L. 115-232, div. A, title XVII, § 1763, Aug. 13, 2018, 132 Stat. 2231; Pub. L. 116-283, div. A, title X, § 1081(d)(9), Jan. 1, 2021, 134 Stat. 3874.)

Editorial Notes

REFERENCES IN TEXT

Executive Order 12981, referred to in subsec. (c), is Ex. Ord. No. 12981, Dec. 5, 1995, 60 F.R. 62981, which is set out as a note under former section 4603 of this title.

AMENDMENTS

2021—Subsec. (c). Pub. L. 116-283 substituted “December 5, 1995” for “December 5, 1991”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116-283, div. A, title X, § 1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(9) is effective as of Aug. 13, 2018, and as if included in Pub. L. 115-232.

Executive Documents**DELEGATION OF AUTHORITIES AND RESPONSIBILITIES UNDER SECTION 1763 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2019**

Memorandum of President of the United States, Jan. 15, 2019, 84 F.R. 197, provided:

Memorandum for the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Commerce, in coordination with executive departments and agencies through the National Security Presidential Memorandum-4 [50 U.S.C. 3021 note] process, the functions and authorities vested in the President by section 1763 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232) [50 U.S.C. 4822].

The delegation of authorities and responsibilities in this memorandum shall apply to any provision of any future public law that are the same or substantially the same as the provision referenced in this memorandum.

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

DONALD J. TRUMP.

§ 4823. Consultation with other agencies on commodity classification

Notwithstanding any other provision of law, the Secretary shall consult with the Secretary of Defense, the Secretary of State, and the Secretary of Energy, as appropriate, regarding commodity classifications for any item the Secretary and the Secretary of Defense, the Secretary of State, and the Secretary of Energy identify and mutually determine is materially significant enough to warrant interagency consultation.

(Pub. L. 115-232, div. A, title XVII, § 1764, Aug. 13, 2018, 132 Stat. 2232.)

§ 4824. Annual report to Congress**(a) In general**

The Secretary shall submit to Congress, by December 31 of each year, a report on the implementation of this subchapter during the preceding fiscal year. The report shall include a review of—

- (1) the effect of controls imposed under this subchapter on exports, reexports, and in-country transfers of items in addressing threats to the national security or foreign policy of the United States, including a description of licensing processing times;
- (2) the impact of such controls on the scientific and technological leadership of the United States;
- (3) the consistency with such controls of export controls imposed by other countries;
- (4) efforts to provide exporters with compliance assistance, including specific actions to assist small- and medium-sized businesses;
- (5) a summary of regulatory changes from the prior fiscal year;
- (6) a summary of export enforcement actions, including of actions taken to implement end-use monitoring of dual-use, military, and other items subject to the Export Administration Regulations;
- (7) a summary of approved license applications to proscribed persons;

(8) efforts undertaken within the previous year to comply with the requirements of section 4817¹ of this title, including any critical technologies identified under such section and how or whether such critical technologies were controlled for export; and

(9) a summary of industrial base assessments conducted during the previous year by the Department of Commerce, including with respect to counterfeit electronics, foundational technologies, and other research and analysis of critical technologies and industrial capabilities of key defense-related sectors.

(b) Form

The report required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex.

(Pub. L. 115-232, div. A, title XVII, § 1765, Aug. 13, 2018, 132 Stat. 2232.)

Editorial Notes**REFERENCES IN TEXT**

This subchapter, referred to in subsec. (a), was in the original “this part”, meaning part I (§§ 1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

Section 4817 of this title, referred to in subsec. (a)(8), was in the original “section 1759”, and was translated as meaning section 1758 of Pub. L. 115-232, which relates to requirements to identify and control the export of emerging and foundational technologies and is classified to section 4817 of this title, to reflect the probable intent of Congress.

§ 4825. Effect on other acts**(a) In general**

Except as otherwise provided in this subchapter, nothing contained in this subchapter shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over the export or reexport of any item.

(b) Coordination of controls**(1) In general**

The authority granted to the President under this subchapter shall be exercised in such manner so as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778) and all other export control and sanctions authorities exercised by Federal departments and agencies, particularly the Department of State, the Department of the Treasury, and the Department of Energy.

(2) Sense of Congress

It is the sense of Congress that in order to achieve effective coordination described in paragraph (1), such Federal departments and agencies—

(A) should continuously work to create enforceable regulations with respect to the export, reexport, and in-country transfer by

¹ See References in Text note below.

United States and foreign persons of commodities, software, technology, and services to various end uses and end users for foreign policy and national security reasons;

(B) should regularly work to reduce complexity in the system, including complexity caused merely by the existence of structural, definitional, and other non-policy based differences between and among different export control and sanctions systems; and

(C) should coordinate controls on items exported, reexported, or in-country transferred in connection with a foreign military sale under chapter 2 of the Arms Export Control Act (22 U.S.C. 2761 et seq.) or a commercial sale under section 38 of the Arms Export Control Act [22 U.S.C. 2778] to reduce as much unnecessary administrative burden as possible that is a result of differences between the exercise of those two authorities.

(c) Nonproliferation controls

Nothing in this subchapter shall be construed to supersede the procedures published by the President pursuant to section 2139a(c) of title 42.

(Pub. L. 115-232, div. A, title XVII, §1767, Aug. 13, 2018, 132 Stat. 2233.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this part”, meaning part I (§§1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

The Arms Export Control Act, referred to in subsec. (b)(2)(C), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320. Chapter 2 of the Act is classified generally to subchapter II (§2761 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.

§ 4826. Transition provisions

(a) In general

All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as in effect on the day before August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of this subchapter.

(b) Administrative and judicial proceedings

This subchapter shall not affect any administrative or judicial proceedings commenced, or any applications for licenses made, under the Export Administration Act of 1979 (as in effect on the day before August 13, 2018, and as continued in effect pursuant to the International

Emergency Economic Powers Act [50 U.S.C. 1701 et seq.]), or the Export Administration Regulations.

(c) Certain determinations and references

(1) State sponsors of terrorism

Any determination that was made under section 6(j) of the Export Administration Act of 1979 (as in effect on the day before August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.]) shall continue in effect as if the determination had been made under section 4813(c) of this title.

(2) Reference

Any reference in any other provision of law to a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (as in effect on the day before August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.]), is a government that has repeatedly provided support for acts of international terrorism shall be deemed to refer to a country the government of which the Secretary of State has determined, for purposes of section 4813(c) of this title, is a government that has repeatedly provided support for acts of international terrorism.

(Pub. L. 115-232, div. A, title XVII, §1768, Aug. 13, 2018, 132 Stat. 2233.)

Editorial Notes

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in text, is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to chapter 56 (§4601 et seq.) of this title and was substantially repealed by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232. Section 6(j) of the Act was classified to section 4605(j) of this title prior to repeal. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in text, 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

This subchapter, referred to in subsecs. (a) and (b), was in the original “this part”, meaning part I (§§1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

SUBCHAPTER II—ANTI-BOYCOTT ACT OF 2018

§ 4841. Statement of policy

Congress declares it is the policy of the United States—

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

(2) to encourage and, in specified cases, require United States persons engaged in the ex-

port 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 any United States person; and

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

(Pub. L. 115-232, div. A, title XVII, § 1772, Aug. 13, 2018, 132 Stat. 2234.)

§ 4842. Foreign boycotts

(a) Prohibitions and exceptions

(1) Prohibitions

For the purpose of implementing the policies set forth in section 4841 of this title, the President shall issue regulations prohibiting any United States person, with respect to that person's 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 any 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 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, 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 coun-

try, 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 subparagraph 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) Exceptions

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) Special rules

Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Rule of construction

Nothing in this subsection may be construed to supersede or limit the operation of the anti-trust or civil rights laws of the United States.

(5) Application

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 general

In addition to the regulations issued pursuant to subsection (a), regulations issued under subchapter I to carry out the policies set forth in section 4811(2)(D) of this title shall implement the policies set forth in this section.

(2) Requirements

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 subsection (a) 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 4841 of this title.

(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 friendly to the United States.

(Pub. L. 115-232, div. A, title XVII, § 1773, Aug. 13, 2018, 132 Stat. 2234; Pub. L. 116-283, div. A, title X, § 1081(d)(10), Jan. 1, 2021, 134 Stat. 3874.)

Editorial Notes

REFERENCES IN TEXT

Subchapter I, referred to in subsec. (b)(1), was in the original "part I", meaning part I (§§ 1751-1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to subchapter I of this chapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 116-283 substituted "(2)(D)" for "(1)(D)" in reference to section 4811(2)(D) of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116-283, div. A, title X, § 1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(10) is effective as of Aug. 13, 2018, and as if included in Pub. L. 115-232.

§ 4843. Enforcement

(a) Criminal penalty

A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act under section 4842 of this title—

(1) shall, upon conviction, be fined not more than \$1,000,000; or

(2) if a natural person, may be imprisoned for not more than 20 years, or both.

(b) Civil penalties

The President may impose the following civil penalties on a person who violates section 4842 of this title or any regulation issued under this subchapter:

(1) A fine of not more than \$300,000 or an amount that is twice the value of the trans-

action that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

(2) Revocation of a license issued under subchapter I to the person.

(3) A prohibition on the person's ability to export, reexport, or in-country transfer any items controlled under subchapter I.

(c) Procedures

Any civil penalty or administrative sanction (including any suspension or revocation of authority to export) under this section 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 and shall be subject to judicial review in accordance with chapter 7 of such title.

(d) Standards for levels of civil penalty

The President may by regulation provide standards for establishing levels of civil penalty under this section based upon factors such as the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

(Pub. L. 115-232, div. A, title XVII, § 1774, Aug. 13, 2018, 132 Stat. 2237; Pub. L. 116-283, div. A, title X, § 1081(d)(11), Jan. 1, 2021, 134 Stat. 3874.)

Editorial Notes

REFERENCES IN TEXT

Subchapter I, referred to in subsec. (b)(2), (3), was in the original “part I”, meaning part I (§§ 1751-1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to subchapter I of this chapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

AMENDMENTS

2021—Subsec. (a), Pub. L. 116-283 inserted “under” before “section 4842 of this title”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116-283, div. A, title X, § 1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(11) is effective as of Aug. 13, 2018, and as if included in Pub. L. 115-232.

SUBCHAPTER III—ADMINISTRATIVE AUTHORITIES

§ 4851. Under Secretary of Commerce for Industry and Security

(a) Under Secretary of Commerce for Industry and Security

The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Industry and Security, who shall carry out—

(1) all functions of the Secretary under this chapter; and

(2) all functions delegated to the Under Secretary of Commerce for Export Administration on the day before the date of the enactment of this Act.

(b) Reference

On and after August 13, 2018, any reference in any law or regulation to the Under Secretary of Commerce for Export Administration shall be deemed to be a reference to the Under Secretary of Commerce for Industry and Security.

(c) Omitted

(d) Continuation in office

The individual serving as Under Secretary of Commerce for Export Administration on the day before August 13, 2018, may serve as the Under Secretary of Commerce for Industry and Security on and after that date without the need for renomination or reappointment.

(Pub. L. 115-232, div. A, title XVII, § 1781, Aug. 13, 2018, 132 Stat. 2238; Pub. L. 116-6, div. H, title II, § 205(a), Feb. 15, 2019, 133 Stat. 476.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original “this subtitle”, meaning subtitle B (§§ 1741-1781) of title XVII of div. A of Pub. L. 115-232, Aug. 13, 2018, 132 Stat. 2208, known as the Export Control Reform Act of 2018, which is classified principally to this chapter. For complete classification of subtitle B to the Code, see section 1741 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

The date of the enactment of this Act, referred to in subsec. (a)(2), probably means the date of enactment of Pub. L. 115-232, which enacted this section and was approved Aug. 13, 2018.

CODIFICATION

Section is comprised of section 1781 of Pub. L. 115-232. Subsec. (c) of section 1781 of Pub. L. 115-232 amended section 5314 of Title 5, Government Organization and Employees.

AMENDMENTS

2019—Pub. L. 116-6, § 205(a)(3), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b), Pub. L. 116-6, § 205(a)(1), (2), redesignated subsec. (a) as (b) and substituted “Reference” for “In general” in heading. Former subsec. (b) redesignated (c).

Subsecs. (c), (d), Pub. L. 116-6, § 205(a)(1), redesignated subsecs. (b) and (c) as (c) and (d), respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-6, div. H, title II, § 205(d), Feb. 15, 2019, 133 Stat. 477, provided that: “The amendments made by this section [amending this section and section 5314 of Title 5, Government Organization and Employees] shall take effect as if included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232).”

§ 4852. Assistant Secretaries of Commerce

(a) In general

The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary of Commerce for Industry and Security in carrying out the functions described in paragraphs (1) and (2) of section 4851(a) of this title.

(b) Continuation in office of one Assistant Secretary

An individual appointed as an Assistant Secretary of Commerce under section 15(a) of the Export Administration Act of 1979¹ (as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)) and serving in that position on the day before the date of the enactment of this Act may serve in one of the Assistant Secretary positions established under subsection (a) on and after that date without the need for renomination or reappointment.

(Pub. L. 115-232, div. A, title XVII, §1782, as added Pub. L. 116-6, div. H, title II, §205(b), Feb. 15, 2019, 133 Stat. 476.)

¹ See References in Text note below.

Editorial Notes

REFERENCES IN TEXT

Section 15(a) of the Export Administration Act of 1979, referred to subsec. (b), was classified to section 4617(a) of this title prior to repeal by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232.

The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), referred to in subsec. (b), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

The date of the enactment of this Act, referred to in subsec. (b), probably means the date of enactment of Pub. L. 115-232, which was approved Aug. 13, 2018.