

Sec.

SUBCHAPTER III—ADMINISTRATIVE
AUTHORITIES

4851. Under Secretary of Commerce for Industry and Security.
4852. Assistant Secretaries of Commerce.

§ 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 bi-

ological 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.