

- (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;