

with section 740.17 of title 15[,] Code of Federal Regulations; and

“(iii) subject to a general license issued by the Department of Commerce or Department of Treasury.

“(e) NATIONAL INTEREST WAIVER.—The Secretary of Commerce may waive the requirements imposed under this section if the Secretary—

“(1) determines that the waiver is in the national interests of the United States; and

“(2) submits to the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate a report explaining which requirements are being waived and the reasons for the waiver.

“(f) SUNSET.—The authority provided under this section shall terminate on the date that is 7 years after the date of the enactment of this division.

“(g) DEFINITIONS.—In this section—

“(1) the term ‘Commerce Control List’ means the list maintained pursuant to part 744 of the Export Administration Regulations;

“(2) the term ‘covered Export Control Classification Number’ means an Export Control Classification Number in product group D or E of Category 3, 4, 5, 6, 7, 8, or 9 of the Commerce Control List;

“(3) the terms ‘Export Administration Regulations’, ‘export’, ‘reexport’, and ‘in-country transfer’ have the meanings given those terms in section 1742 of the Export Control Reform Act of 2018 (50 U.S.C. 4801); and

“(4) the terms ‘direct product’, ‘technology’, ‘software’, ‘major component’, ‘knowledge’, ‘production’, ‘development’, ‘part’, ‘component’, ‘equipment’, and ‘government end users’ have the meanings given those terms in section 734.9 or part 772 of the Export Administration Regulations, as the case may be.”

[Memorandum of President of the United States, §5, Sept. 13, 2024, 89 F.R. 77758, provided:

[In exercising the functions and authorities described in section 2(d) of the No Technology for Terror Act (Division N of Public Law 118-50) [set out above], I hereby direct the Secretary of Commerce to consult with the Secretary of State and the Secretary of the Treasury. [J.R. Biden, Jr.]

§ 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 Relations 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, reex-

port, 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”, 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 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, Govern-

ment 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: