

**(b) Foreign policy controls**

(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act [section 2405 of this Appendix] shall implement the policies set forth in section 3(5) [section 2402(5) of this Appendix].

(2) 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 section 3(5) [section 2402(5) of this Appendix] 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 3(5) of this Act [section 2402(5) of this Appendix].

**(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.

(Pub. L. 96-72, § 8, Sept. 29, 1979, 93 Stat. 521.)

## PRIOR PROVISIONS

A prior section 2407, Pub. L. 91-184, § 8, Dec. 30, 1969, 83 Stat. 846; Pub. L. 95-52, title II, § 203(b), June 22, 1977, 91 Stat. 247, relating to exemption from administrative procedure and judicial review provisions, expired on Sept. 30, 1979.

## DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix.

**§ 2408. Procedures for hardship relief from export controls****(a) Filing of petitions**

Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced

abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

**(b) Decision of Secretary**

Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

**(c) Factors to be considered**

For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account—

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

(Pub. L. 96-72, § 9, Sept. 29, 1979, 93 Stat. 524.)

## PRIOR PROVISIONS

A prior section 2408, Pub. L. 91-184, §9, Dec. 30, 1969, 83 Stat. 846, relating to providing information to exporters, expired on Sept. 30, 1979.

**§ 2409. Procedures for processing export license applications; other inquiries**

**(a) Primary responsibility of Secretary**

(1) All export license applications required under this Act [sections 2401 to 2420 of this Appendix] shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

**(b) Initial screening**

Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

(1) send the applicant an acknowledgment of the receipt of the application and the date of the receipt;

(2) submit to the applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application, and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case if such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, if so, inform the applicant of this requirement.

**(c) Action on certain applications**

Except as provided in subsection (o), in each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be for-

mally issued or denied within 60 days after a properly completed application has been submitted pursuant to this section.

**(d) Referral to other departments and agencies**

Except in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 20 days after the submission of a properly completed application—

(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

Notwithstanding the 10-day period set forth in subsection (b), in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, immediately upon receipt of the properly completed application, refer the application to such department or agency for its review. Such review shall be concurrent with that of the Department of Commerce.

**(e) Action by other departments and agencies**

(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary the information or recommendations requested with respect to the application. The information or recommendations shall be submitted within 20 days after the department or agency receives the application or, in the case of exports described in subsection (o), before the expiration of the time periods permitted by that subsection. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

(2)(A) Except in the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 20-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

(B) In the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary, before the expiration of the 15-day period provided in sub-