

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-

section (o)(1), that more time is required for review by such department or agency, the Secretary shall notify the applicant, pursuant to subsection (o)(1)(C), that additional time is required to consider the application, and such department or agency shall have additional time to consider the application within the limits permitted by subsection (o)(2). If such department or agency does not submit its recommendations within the time periods permitted under subsection (o), it shall be deemed by the Secretary to have no objection to the approval of such application.

(f) Action by Secretary

(1) Within 60 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 60-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant in writing of the specific questions raised and any such negative considerations or recommendations. Before a final determination with respect to the application is made, the applicant shall be entitled—

(A) to respond in writing to such questions, considerations, or recommendations within 30 days after receipt of such information from the Secretary; and

(B) upon the filing of a written request with the Secretary within 15 days after the receipt of such information, to respond in person to the department or agency raising such questions, considerations, or recommendations.

The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of—

(A) the determination,

(B) the statutory basis for the proposed denial,

(C) the policies set forth in section 3 of this Act [section 2402 of this Appendix] which would be furthered by the proposed denial,

(D) what if any modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with export controls imposed under this Act [sections 2401 to 2420 of this Appendix],

(E) which officers and employees of the Department of Commerce who are familiar with

the application will be made reasonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate,

(F) to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the determination to deny the application, and

(G) the availability of appeal procedures.

The Secretary shall allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after such deferral.

(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(g) Special procedures for Secretary of Defense

(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 20 days after notification of the request, shall—

(A) recommend to the President and the Secretary that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to

the military potential of such country or any other country;

(B) notify the Secretary that he would recommend approval subject to specified conditions; or

(C) recommend to the Secretary that the export of goods or technology be approved.

Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense. If the President notifies the Secretary, within 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country. If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a license or other authority to export without such recommendation or notification.

(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

(h) Multilateral controls

In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 40 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 40-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every 40-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and

any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

(i) Records

The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

(j) Appeal and court action

(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) If, within 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

(k) Changes in requirements for applications

Except as provided in subsection (b)(3) of this section, in any case in which, after a license application is submitted, the Secretary changes the requirements for such a license application, the Secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.

(l) Other inquiries

(1) In any case in which the Secretary receives a written request asking for the proper classification of a good or technology on the control list, the Secretary shall, within 10 working days after receipt of the request, inform the person making the request of the proper classification.

(2) In any case in which the Secretary receives a written request for information about the applicability of export license requirements under

this Act [sections 2401 to 2420 of this Appendix] to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receipt of the request, reply with that information to the person making the request.

(m) Small business assistance

Not later than 120 days after the date of the enactment of this subsection [July 12, 1985], the Secretary shall develop and transmit to the Congress a plan to assist small businesses in the export licensing application process under this Act [sections 2401 to 2420 of this Appendix]. The plan shall include, among other things, arrangements for counseling small businesses on filing applications and identifying goods or technology on the control list, proposals for seminars and conferences to educate small businesses on export controls and licensing procedures, and the preparation of informational brochures. The Secretary shall, not later than 120 days after the date of the enactment of the Export Enhancement Act of 1988 [Aug. 23, 1988], report to the Congress on steps taken to implement the plan developed under this subsection to assist small businesses in the export licensing application process.

(n) Reports on license applications

(1) Not later than 180 days after the date of the enactment of this subsection [July 12, 1985], and not later than the end of each 3-month period thereafter, the Secretary shall submit to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate a report listing—

(A) all applications on which action was completed during the preceding 3-month period and which required a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, before notification of a decision to approve or deny the application was sent to the applicant; and

(B) in a separate section, all applications which have been in process for a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, and upon which final action has not been taken.

(2) With regard to each application, each listing shall identify—

(A) the application case number;

(B) the value of the goods or technology to which the application relates;

(C) the country of destination of the goods or technology;

(D) the date on which the application was received by the Secretary;

(E) the date on which the Secretary approved or denied the application;

(F) the date on which the notification of approval or denial of the application was sent to the applicant; and

(G) the total number of days which elapsed between receipt of the application, in its properly completed form, and the earlier of the last day of the 3-month period to which the report relates, or the date on which notification of approval or denial of the application was sent to the applicant.

(3) With respect to an application which was referred to other departments or agencies, the listing shall also include—

(A) the departments or agencies to which the application was referred;

(B) the date or dates of such referral; and

(C) the date or dates on which recommendations were received from those departments or agencies.

(4) With respect to an application referred to any other department or agency which did not submit or has not submitted its recommendations on the application within the period permitted under subsection (e) of this section to submit such recommendations, the listing shall also include—

(A) the office responsible for processing the application and the position of the officer responsible for the office; and

(B) the period of time that elapsed before the recommendations were submitted or that has elapsed since referral of the application, as the case may be.

(5) Each report shall also provide an introduction which contains—

(A) a summary of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in the applications, grouped according to—

(i) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, as follows: 61 to 75 days, 76 to 90 days, 91 to 105 days, 106 to 120 days, and more than 120 days; and

(ii) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, beyond the period permitted under subsection (c), (f)(1), or (h) of this section for the processing of applications, as follows: not more than 15 days, 16 to 30 days, 31 to 45 days, 46 to 60 days, and more than 60 days; and

(B) a summary by country of destination of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in the applications, on which action was not completed within 60 days.

(o) Exports to members of Coordinating Committee

(1) Fifteen working days after the date of formal filing with the Secretary of an individual validated license application for the export of goods or technology to a country that maintains export controls on such goods or technology pursuant to the agreement of the governments participating in the group known as the Coordinating Committee, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless—

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval;

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied; or

(C) the Secretary requires additional time to consider the application and the applicant has been so informed.

(2) In the event that the Secretary notifies an applicant pursuant to paragraph (1)(C) that more time is required to consider an individual validated license application, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license 30 working days after the date that such license application was formally filed with the Secretary unless—

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval; or

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied.

(3) In reviewing an individual license application subject to this subsection, the Secretary shall evaluate the information set forth in the application and the reliability of the end-user.

(4) Nothing in this subsection shall affect the scope or availability of licenses authorizing multiple exports set forth in section 4(a)(2) of this Act [section 2403(a)(2) of this Appendix].

(5) The provisions of this subsection shall take effect 4 months after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985].

(Pub. L. 96-72, §10, Sept. 29, 1979, 93 Stat. 525; Pub. L. 99-64, title I, §111, July 12, 1985, 99 Stat. 142; Pub. L. 100-418, title II, §2425(a), (c), Aug. 23, 1988, 102 Stat. 1360, 1361.)

PRIOR PROVISIONS

A prior section 2409, Pub. L. 91-184, §10, Dec. 30, 1969, 83 Stat. 846; Pub. L. 93-500, §3(b), Oct. 29, 1974, 88 Stat. 1552; Pub. L. 93-608, §2(1), Jan. 2, 1975, 88 Stat. 1971; Pub. L. 95-52, title I, §116(a), (b)(2), June 22, 1977, 91 Stat. 241, 242, setting forth requirements respecting semiannual reports to President and Congress, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (g)(2). Pub. L. 100-418, §2425(a)(1)-(3), substituted “President and the Secretary” for “President” in subpar. (A), inserted before last sentence “Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense.”, and inserted at end “If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a li-

cence or other authority to export without such recommendation or notification.”

Subsec. (g)(4). Pub. L. 100-418, §2425(a)(4), struck out par. (4) which read as follows: “Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 5 of this Act with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his decision, together with the recommendation of the Secretary of Defense.”

Subsec. (m). Pub. L. 100-418, §2425(c), inserted sentence at end requiring the Secretary, not later than 120 days after Aug. 23, 1988, to report to Congress on steps taken to implement the plan developed to assist small businesses in the export licensing application process.

1985—Pub. L. 99-64, §111(e)(1), inserted “; other inquiries” in section catchline.

Subsec. (c). Pub. L. 99-94, §111(a)(2), (b)(1), substituted “Except as provided in subsection (o) of this section, in each case” for “In each case” and “60” for “90”.

Subsec. (d). Pub. L. 99-64, §111(a)(3), (b)(2), substituted “Except in the case of exports described in subsection (o) of this section, in each case” for “In each case” and “20” for “30” in provisions preceding par. (1), and inserted flush provision following par. (2) relating to exports described in subsec. (o) when it becomes necessary to refer an application to another department or agency for information and recommendations.

Subsec. (e)(1). Pub. L. 99-64, §111(b)(3)(A), substituted “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” for “Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary, within 30 days after its receipt of the application, the information or recommendations requested with respect to such application” and inserted sentence directing that information or recommendations 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.

Subsec. (e)(2)(A). Pub. L. 99-64, §111(a)(3), (b)(3)(B)(i), designated existing provisions of par. (2) as subpar. (A) and substituted “Except in the case of exports described in subsection (o), if the head” for “If the head” and “20” for “30”.

Subsec. (e)(2)(B). Pub. L. 99-64, §111(b)(3)(B)(ii), added subpar. (B).

Subsec. (f)(1). Pub. L. 99-64, §111(a)(2), (b)(4), substituted “60” for “90” in two places and inserted sentence providing that the provisions of this paragraph shall not apply in the case of exports described in subsection (o).

Subsec. (f)(2). Pub. L. 99-64, §111(c), inserted “in writing” after “inform the applicant”, and substituted provisions describing the steps to which the applicant is entitled before a final determination with respect to the application is made and providing that the provisions of this paragraph shall not apply in the case of exports described in subsection (o), for provision that the Secretary accord the applicant an opportunity, before the final determination with respect to the application is made, to respond in writing to such questions, considerations, or recommendations.

Subsec. (f)(3). Pub. L. 99-64, §111(d), inserted two new sentences describing the content of the writing which the applicant is entitled to receive when the Secretary determines that an application should be denied and directing that the Secretary allow the applicant at least 30 days to respond to the Secretary’s determination before the license application is denied, and struck out existing sentence which had provided: “In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in

writing, within 5 days after such determination is made, of the determination, of the statutory basis for denial, the policies set forth in section 3 of the Act [section 2402 of this Appendix] which would be furthered by denial, and, to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the denial, and of the availability of appeal procedures.”

Subsec. (f)(4). Pub. L. 99-64, §111(b)(4), inserted sentence providing that provisions of this paragraph shall not apply in the case of exports described in subsec. (o).

Subsec. (g)(2). Pub. L. 99-64, §111(a)(3), substituted “20” for “30” in provisions preceding subpar. (A) and in provisions following subpar. (C).

Subsec. (h). Pub. L. 99-64, §111(a)(1), substituted “40” for “60” wherever appearing.

Subsec. (j)(3). Pub. L. 99-64, §111(a)(3), substituted “20” for “30”.

Subsecs. (k) to (o). Pub. L. 99-64, §111(e)(2), added subsecs. (k) to (o).

REGULATIONS

Section 19(b)(1) of Pub. L. 96-72 provided that: “Regulations implementing the provisions of section 10 of this Act [this section] shall be issued and take effect not later than July 1, 1980.”

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, with exception of functions conferred upon President under subsec. (g) of this section which were reserved to President.

§ 2410. Violations

(a) In general

Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) Willful violations

(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act [sections 2401 to 2420 of this Appendix] for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 5 years, or both.

(3) Any person who possesses any goods or technology—

(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] or any regulation, order, or license issued with respect to such control, or

(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 [section 2404 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 [section 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix] shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act [sections 2401 to 2420 of this Appendix].

(c) Civil penalties; administrative sanctions

(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed \$10,000 for each violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix], either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act [section 2404 of this Appendix] or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act [22 U.S.C. 2778] may not exceed \$100,000.

(2)(A) The authority under this Act [sections 2401 to 2420 of this Appendix] to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix].