

administrative record for purposes of review by the courts.

(3) An order of the Secretary affirming, in whole or in part, the issuance of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may review only those issues necessary to determine whether the standard for issuing the temporary denial order has been met. The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(e) Appeals from license denials

A determination of the Secretary, under section 10(f) of this Act [section 2409(f) of this Appendix], to deny a license may be appealed by the applicant to an administrative law judge who shall have the authority to conduct proceedings to determine only whether the item sought to be exported is in fact on the control list. Such proceedings shall be conducted within 90 days after the appeal is filed. Any determination by an administrative law judge under this subsection and all materials filed before such judge in the proceedings shall be reviewed by the Secretary, who shall either affirm or vacate the determination in a written decision within 30 days after receiving the determination. The Secretary's written decision shall be final and is not subject to judicial review. Subject to the limitations provided in section 12(c) of this Act [section 2411(c) of this Appendix], the Secretary's decision shall be published in the Federal Register.

(Pub. L. 96-72, §13, Sept. 29, 1979, 93 Stat. 531; Pub. L. 99-64, title I, §114, July 12, 1985, 99 Stat. 150; Pub. L. 100-418, title II, §2428, Aug. 23, 1988, 102 Stat. 1361.)

PRIOR PROVISIONS

A prior section 2412, Pub. L. 91-184, §14, formerly §13, Dec. 30, 1969, 83 Stat. 847; renumbered §14, Pub. L. 95-52, title I, §102, June 22, 1977, 91 Stat. 235, which set forth the effective date of the Export Administration Act of 1969 as the date upon which the Export Control Act of 1949 expired, Dec. 31, 1969, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100-418, §2428(a)(1)(A), inserted “, except as provided in paragraph (3)” before period at end.

Subsec. (c)(3), (4). Pub. L. 100-418, §2428(a)(1)(B), (C), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d)(1). Pub. L. 100-418, §2428(b), substituted “180” for “60” in two places in second sentence.

Subsec. (d)(2). Pub. L. 100-418, §2428(a)(2), inserted “, except as provided in paragraph (3)” after “judicial review” before period at end of fifth sentence and inserted sentence at end that all materials submitted to the administrative law judge and the Secretary constitute the administrative record for purposes of review.

Subsec. (d)(3). Pub. L. 100-418, §2428(a)(2)(B), added par. (3).

1985—Pub. L. 99-64, §114(1), struck out “Exemption from certain provisions relating to” in section catchline.

Subsec. (a). Pub. L. 99-64, §114(2), inserted “and subsection (c) of this section”.

Subsecs. (c) to (e). Pub. L. 99-64, §114(3), added subsecs. (c) to (e).

§ 2413. Annual report

(a) Contents

Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act [sections 2401 to 2420 of this Appendix] during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

(1) the implementation of the policies set forth in section 3 [section 2402 of this Appendix];

(2) general licensing activities under sections 5, 6, and 7 [sections 2404, 2405, and 2406 of this Appendix], and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a) [sections 2404(a), 2405(a), and 2406(a) of this Appendix];

(3) the results of the review of United States policy toward individual countries pursuant to section 5(b) [section 2404(b) of this Appendix];

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3) [section 2404(c)(3) of this Appendix];

(5) actions taken to carry out section 5(d) [section 2404(d) of this Appendix];

(6) changes in categories of items under export control referred to in section 5(e) [section 2404(e) of this Appendix];

(7) determinations of foreign availability made under section 5(f) [section 2404(f) of this Appendix], the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 5(f)(6) [section 2404(f)(6) of this Appendix];

(9) the operation of the indexing system under section 5(g) [section 2404(g) of this Appendix];

(10) consultations with the technical advisory committees established pursuant to section 5(h) [section 2404(h) of this Appendix], the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act [sections 2401 to 2420 of this Appendix];

(11) the effectiveness of export controls imposed under section 6 [section 2405 of this Appendix] in furthering the foreign policy of the United States;

(12) export controls and monitoring under section 7 [section 2406 of this Appendix];

(13) the information contained in the reports required by section 7(b)(2) [section 2406(b)(2) of this Appendix], together with an analysis of—

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under

this Act [sections 2401 to 2420 of this Appendix] or section 812¹ of the Agricultural Act of 1970 [7 U.S.C. 612c-3];

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act [section 2402(5) of this Appendix];

(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act [sections 2401 to 2420 of this Appendix], including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10 [section 2409 of this Appendix], including an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

(16) delegations of authority by the President as provided in section 4(e) of this Act [section 2403(e) of this Appendix];

(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act [sections 2401 to 2420 of this Appendix];

(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d) [section 2411(d) of this Appendix], and any action taken, on the basis of the review required by section 12(e) [section 2411(e) of this Appendix], to simplify regulations issued under this Act [sections 2401 to 2420 of this Appendix];

(19) violations under section 11 [section 2410 of this Appendix] and enforcement activities under section 12 [section 2411 of this Appendix]; and

(20) the issuance of regulations under the authority of this Act [sections 2401 to 2420 of this Appendix], including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b) [section 2412(b) of this Appendix].

(b) Report on certain export controls

To the extent that the President determines that the policies set forth in section 3 of this Act [section 2402 of this Appendix] require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

(c) Report on negotiations

The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i) [section 2404(i) of this Appendix], until such negotiations are concluded.

(d) Report on exports to controlled countries

The Secretary shall include in each annual report a detailed report which lists every license for exports to controlled countries which was approved under this Act [sections 2401 to 2420 of this Appendix] during the preceding fiscal year. Such report shall specify to whom the license was granted, the type of goods or technology exported, and the country receiving the goods or technology. The information required by this subsection shall be subject to the provisions of section 12(c) of this Act [section 2411(c) of this Appendix].

(e) Report on domestic economic impact of exports to controlled countries

The Secretary shall include in each annual report a detailed description of the extent of injury to United States industry and the extent of job displacement caused by United States exports of goods and technology to controlled countries. The annual report shall also include a full analysis of the consequences of exports of turnkey plants and manufacturing facilities to controlled countries which are used by such countries to produce goods for export to the United States or to compete with United States products in export markets.

(f) Annual report of the President

The President shall submit an annual report to the Congress estimating the additional defense expenditures of the United States arising from illegal technology transfers, focusing on estimated defense costs arising from illegal technology transfers that resulted in a serious adverse impact on the strategic balance of forces. These estimates shall be based on assessment by the intelligence community of any technology transfers that resulted in such serious adverse impact. This report may have a classified annex covering any information of a sensitive nature.

(Pub. L. 96-72, §14, Sept. 29, 1979, 93 Stat. 532; Pub. L. 99-64, title I, §115, July 12, 1985, 99 Stat. 152; Pub. L. 100-418, title II, §§2418(c), 2445, Aug. 23, 1988, 102 Stat. 1357, 1369.)

REFERENCES IN TEXT

Section 812 of the Agricultural Act of 1970, referred to in subsec. (a)(13)(A), which was classified to section 612c-3 of Title 7, Agriculture, was repealed by Pub. L. 101-624, title XV, §1578, Nov. 28, 1990, 104 Stat. 3702.

PRIOR PROVISIONS

A prior section 2413, Pub. L. 91-184, §15, formerly §14, Dec. 30, 1969, 83 Stat. 847; Pub. L. 92-37, June 30, 1971, 85 Stat. 89; Pub. L. 92-150, Oct. 30, 1971, 85 Stat. 416; Pub. L. 92-284, Apr. 29, 1972, 86 Stat. 133; Pub. L. 92-412, title I, §106, Aug. 29, 1972, 86 Stat. 646; Pub. L. 93-327, June 30, 1974, 88 Stat. 287; Pub. L. 93-372, Aug. 14, 1974, 88 Stat. 444; Pub. L. 93-500, §13, Oct. 29, 1974, 88 Stat. 1557; renumbered §15 and amended Pub. L. 95-52, title I, §§101, 102, June 22, 1977, 91 Stat. 235, providing for the termination of authority granted by the Export Administration Act of 1969, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (a)(8). Pub. L. 100-418, §2418(c), substituted “5(f)(6)” for “5(f)(5)”.

Subsec. (f). Pub. L. 100-418, §2445, added subsec. (f).

1985—Subsec. (a)(15). Pub. L. 99-64, §115(a), struck out “an analysis of the time required to process license ap-

¹ See References in Text note below.

plications, the number and disposition of export license applications taking more than 30 days to process, and” after “requirements of section 10, including”.

Subsecs. (d), (e). Pub. L. 99-64, §115(b), added subsecs. (d) and (e).

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.

§ 2414. Administrative and regulatory authority

(a) Under Secretary of Commerce

The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this Act [sections 2401 to 2420 of this Appendix] and such other statutes that relate to national security which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration before the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985], and such other functions under this Act [sections 2401 to 2420 of this Appendix] which were delegated to such office before such date of enactment, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

(b) Issuance of regulations

The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act [sections 2401 to 2420 of this Appendix]. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b) [section 2404(a), 2405(a), 2406(a), or 2407(b) of this Appendix] may apply to the financing, transporting, or other servicing of exports and the participation therein by any person. Any such regulations the purpose of which is to carry out the provisions of section 5 [section 2404 of this Appendix], or of section 4(a) [section 2403(a) of this Appendix] for the purpose of administering the provisions of section 5 [section 2404 of this Appendix], may be issued only after the regulations are submitted for review to the Secretary of Defense, the Secretary of State, such other departments and agencies as the Secretary considers appropriate, and the appropriate technical advisory committee. The preceding sentence does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

(c) Amendments to regulations

If the Secretary proposes to amend regulations issued under this Act [sections 2401 to 2420 of this Appendix], the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the technical advisory committees author-

ized under section 5(h) of this Act [section 2404(h) of this Appendix] in formulating or amending regulations issued under this Act [sections 2401 to 2420 of this Appendix]. The procedures defined by regulations in effect on January 1, 1984, with respect to sections 4 and 5 of this Act [sections 2403 and 2404 of this Appendix], shall remain in effect unless the Secretary determines, on the basis of substantial and reliable evidence, that specific change is necessary to enhance the prevention of diversions of exports which would prove detrimental to the national security of the United States or to reduce the licensing and paperwork burden on exporters and their distributors.

(Pub. L. 96-72, §15, Sept. 29, 1979, 93 Stat. 533; Pub. L. 99-64, title I, §116(a), July 12, 1985, 99 Stat. 152; Pub. L. 100-418, title II, §§2420(b), 2429, Aug. 23, 1988, 102 Stat. 1358, 1362.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-418, §2429, inserted “and such other statutes that related to national security” after “Secretary under this Act”.

Subsec. (b). Pub. L. 100-418, §2420(b), substituted “such other” for “and such other” and inserted “, and the appropriate technical advisory committee” after “appropriate”.

1985—Pub. L. 99-64 substituted “Administrative and regulatory authority” for “Regulatory authority” as section catchline, and amended text generally. Prior to amendment, section read as follows: “The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person.”

EFFECTIVE DATE OF 1985 AMENDMENT

Subsec. (a) of this section effective Oct. 1, 1987, see section 116(d) of Pub. L. 99-64, set out as a note under section 5314 of Title 5, Government Organization and Employees.

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.

SPENDING AUTHORITY UNDER 1985 AMENDMENT

Section 116(e) of Pub. L. 99-64 provided that: “Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974 [2 U.S.C. 651]) which is provided under this section [amending this section and sections 5314 and 5315 of Title 5, Government Organization and Employees] shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriation Acts.”

§ 2415. Definitions

As used in this Act [sections 2401 to 2420 of this Appendix]—

(1) the term “person” includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term “United States person” means 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