

**§ 4617. 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 chapter 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 July 12, 1985, and such other functions under this chapter which were delegated to such office before such date, 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 chapter. Any such regulations issued to carry out the provisions of section 4604(a), 4605(a), 4606(a), or 4607(b) of this title 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 4604 of this title, or of section 4603(a) of this title for the purpose of administering the provisions of section 4604 of this title, 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 chapter, 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 authorized under section 4604(h) of this title in formulating or amending regulations issued under this chapter. The procedures defined by regulations in effect on January 1, 1984, with respect to sections 4603 and 4604 of this title, 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.)

## TERMINATION DATE

*For termination of authority granted by this chapter, see section 4622 of this title.*

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, known as the Export Administration Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

## CODIFICATION

Section was formerly classified to section 2414 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

## AMENDMENTS

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

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 chapter. Any such regulations issued to carry out the provisions of section 4604(a), 4605(a), 4606(a), or 4607(b) of this title 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 4603 of this title.

## SPENDING AUTHORITY UNDER 1985 AMENDMENT

Pub. L. 99-64, title I, §116(e), July 12, 1985, 99 Stat. 153, 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.”

**§ 4618. Definitions**

As used in this chapter—

(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 any foreign concern) and any foreign subsidiary or affiliate (including any permanent for-

eign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(3) the term “good” means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

(4) the term “technology” means the information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves;

(5) the term “export” means—

(A) an actual shipment, transfer, or transmission of goods or technology out of the United States;

(B) a transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or

(C) a transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient;

(6) the term “controlled country” means a controlled country under section 4604(b)(1) of this title;

(7) the term “United States” means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in section 1331(a) of title 43; and

(8) the term “Secretary” means the Secretary of Commerce.

(Pub. L. 96-72, §16, Sept. 29, 1979, 93 Stat. 533; Pub. L. 99-64, title I, §117, July 12, 1985, 99 Stat. 153.)

#### TERMINATION DATE

*For termination of authority granted by this chapter, see section 4622 of this title.*

#### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, known as the Export Administration Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

#### CODIFICATION

Section was formerly classified to section 2415 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

#### AMENDMENTS

1985—Par. (3). Pub. L. 99-64, §117(1), inserted “natural or manmade substance.”

Par. (4). Pub. L. 99-64, §117(2), amended par. (4) generally, substituting “the term ‘technology’ means the information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form,

such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves;” for “the information and knowhow that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves; and”.

Pars. (5) to (8). Pub. L. 99-64, §117(3), (4), added pars. (5) to (7) and redesignated former par. (5) as (8).

#### 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 4603 of this title.

### § 4619. Effect on other Acts

#### (a) In general

Except as otherwise provided in this chapter, nothing contained in this chapter shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

#### (b) Coordination of controls

The authority granted to the President under this chapter shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 2778 of title 22.

#### (c) Civil aircraft equipment

Notwithstanding any other provision of law, any product (1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this chapter. Any such product shall not be subject to controls under section 2778(b)(2) of title 22.

#### (d) Nonproliferation controls

(1) Nothing in section 4604 or 4605 of this title shall be construed to supersede the procedures published by the President pursuant to section 2139a(c) of title 42.

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 2139a(c) of title 42, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 4609 of this title shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 4609(j) of this title.

#### (e) Termination of other authority

On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611-1613d), is superseded.

#### (f) Agricultural Act of 1970

Nothing in this chapter shall affect the provisions of the last sentence of section 812<sup>1</sup> of the Agricultural Act of 1970 (7 U.S.C. 612c-3).

<sup>1</sup> See References in Text note below.