

availability of such encryption products cannot be made subject to public disclosure or judicial review without revealing or implicating classified information that could harm United States national security and foreign policy interests. Accordingly, sections 4(c) and 6(h)(2)–(4) of the Export Administration Act of 1979 (“the EAA”), 50 U.S.C. App. 2403(c) and 2405(h)(2)–(4) [former 50 U.S.C. 4603(c) and 4605(h)(2)–(4)], as amended and as continued in effect by Executive Order 12924 of August 19, 1994, and by notices of August 15, 1995, and August 14, 1996, all other analogous provisions of the EAA relating to foreign availability, and the regulations in the EAR relating to such EAA provisions, shall not be applicable with respect to export controls on such encryption products. Notwithstanding this, the Secretary of Commerce (“Secretary”) may, in his discretion, consider the foreign availability of comparable encryption products in determining whether to issue a license in a particular case or to remove controls on particular products, but is not required to issue licenses in particular cases or to remove controls on particular products based on such consideration;

(b) [Amended Ex. Ord. No. 12981, set out above;]

(c) Because the export of encryption software, like the export of other encryption products described in this section, must be controlled because of such software’s functional capacity, rather than because of any possible informational value of such software, such software shall not be considered or treated as “technology,” as that term is defined in section 16 of the EAA (50 U.S.C. App. 2415) [former 50 U.S.C. 4618] and in the EAR (61 Fed. Reg. 12714, March 25, 1996);

(d) With respect to encryption products described in this section, the Secretary shall take such actions, including the promulgation of rules, regulations, and amendments thereto, as may be necessary to control the export of assistance (including training) to foreign persons in the same manner and to the same extent as the export of such assistance is controlled under the AECA, as amended by section 151 of Public Law 104–164 [see 22 U.S.C. 2778(b)(1)(A)];

(e) Appropriate controls on the export and foreign dissemination of encryption products described in this section may include, but are not limited to, measures that promote the use of strong encryption products and the development of a key recovery management infrastructure; and

(f) Regulation of encryption products described in this section shall be subject to such further conditions as the President may direct.

SEC. 2. *Effective Date.* The provisions described in section 1 shall take effect as soon as any encryption products described in section 1 are placed on the Commerce Control List in the EAR.

SEC. 3. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and to ensure the implementation of appropriate controls on the export and foreign dissemination of encryption products. It is not intended to, and does not, create any rights to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 4604. Repealed. Pub. L. 115–232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232

Section, Pub. L. 96–72, § 5, Sept. 29, 1979, 93 Stat. 506; Pub. L. 99–64, title I, §§ 105(a)–(c)(1), (d)–(j), 106, 107, July 12, 1985, 99 Stat. 123–129; Pub. L. 100–418, title II, §§ 2413–2418(b), 2419, 2420(a), 2421, 2422, 2446, Aug. 23, 1988, 102 Stat. 1347–1358, 1369; Pub. L. 114–125, title VIII, § 802(d)(2), Feb. 24, 2016, 130 Stat. 210, related to prohibition or curtailment of exports for national security purposes.

Section was formerly classified to section 2404 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

A prior section 2404 of the former Appendix to this title, Pub. L. 91–184, § 5, Dec. 30, 1969, 83 Stat. 843; Pub. L. 92–412, title I, § 105, Aug. 29, 1972, 86 Stat. 645; Pub. L. 93–500, §§ 3(c), (d), 5(b), (c), 6, Oct. 29, 1974, 88 Stat. 1553, 1554; Pub. L. 95–52, title I, § 111, June 22, 1977, 91 Stat. 240, set forth determinations, limitations, etc., respecting the control and monitoring of exports, prior to the expiration of Pub. L. 91–184 on Sept. 30, 1979.

EXPORT CONTROLS ON HIGH PERFORMANCE COMPUTERS

Pub. L. 105–85, div. A, title XII, subtitle B, Nov. 18, 1997, 111 Stat. 1932, as amended by Pub. L. 105–261, div. A, title XV, § 1524, Oct. 17, 1998, 112 Stat. 2180; Pub. L. 106–65, div. A, title X, § 1067(4), title XIV, § 1407(c), Oct. 5, 1999, 113 Stat. 774, 801; Pub. L. 106–398, § 1 [div. A], title XII, § 1234(a), Oct. 30, 2000, 114 Stat. 1654, 1654A–330, provided that:

“SEC. 1211. EXPORT APPROVALS FOR HIGH PERFORMANCE COMPUTERS.

“(a) **PRIOR APPROVAL OF EXPORTS AND REEXPORTS.**—The President shall require that no digital computer with a composite theoretical performance level of more than 2,000 millions of theoretical operations per second (MTOPS) or with such other composite theoretical performance level as may be established subsequently by the President under subsection (d), may be exported or reexported without a license to a country specified in subsection (b) if the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, or the Director of the Arms Control and Disarmament Agency objects, in writing, to such export or reexport. Any person proposing to export or reexport such a digital computer shall so notify the Secretary of Commerce, who, within 24 hours after receiving the notification, shall transmit the notification to the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency.

“(b) **COVERED COUNTRIES.**—For purposes of subsection (a), the countries specified in this subsection are the countries listed as ‘Computer Tier 3’ eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997, subject to modification by the President under subsection (e).

“(c) **TIME LIMIT.**—Written objections under subsection (a) to an export or reexport shall be raised within 10 days after the notification is received under subsection (a). If such a written objection to the export or reexport of a computer is raised, the computer may be exported or reexported only pursuant to a license issued by the Secretary of Commerce under the Export Administration Regulations of the Department of Commerce, without regard to the licensing exceptions otherwise authorized under section 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997. If no objection is raised within the 10-day period, the export or reexport is authorized.

“(d) **ADJUSTMENT OF COMPOSITE THEORETICAL PERFORMANCE.**—The President, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency, may establish a new composite theoretical performance level for purposes of subsection (a). Such new level shall not take effect until 60 days after the President submits to the congressional committees designated in section 1215 a report setting forth the new composite theoretical performance level and the justification for such new level. Each report shall, at a minimum—

“(1) address the extent to which high performance computers of a composite theoretical level between the level established in subsection (a) or such level as has been previously adjusted pursuant to this section and the new level, are available from other countries;

“(2) address all potential uses of military significance to which high performance computers at the new level could be applied; and

“(3) assess the impact of such uses on the national security interests of the United States.

“(e) ADJUSTMENT OF COVERED COUNTRIES.—

“(1) IN GENERAL.—The President, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency, may add a country to or remove a country from the list of covered countries in subsection (b), except that a country may be removed from the list only in accordance with paragraph (2).

“(2) DELETIONS FROM LIST OF COVERED COUNTRIES.—The removal of a country from the list of covered countries under subsection (b) shall not take effect until 120 days after the President submits to the congressional committees designated in section 1215 a report setting forth the justification for the deletion.

“(3) EXCLUDED COUNTRIES.—A country may not be removed from the list of covered countries under subsection (b) if—

“(A) the country is a ‘nuclear-weapon state’ (as defined by Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons) and the country is not a member of the North Atlantic Treaty Organization; or

“(B) the country is not a signatory of the Treaty on the Non-Proliferation of Nuclear Weapons and the country is listed on Annex 2 to the Comprehensive Nuclear Test-Ban Treaty.

“(f) CLASSIFICATION.—Each report under subsections (d) and (e) shall be submitted in an unclassified form and may, if necessary, have a classified supplement.

“(g) DELEGATION OF OBJECTION AUTHORITY WITHIN THE DEPARTMENT OF DEFENSE.—For the purposes of the Department of Defense, the authority to issue an objection referred to in subsection (a) shall be executed for the Secretary of Defense by an official at the Assistant Secretary level within the office of the Under Secretary of Defense for Policy. In implementing subsection (a), the Secretary of Defense shall ensure that Department of Defense procedures maximize the ability of the Department of Defense to be able to issue an objection within the 10-day period specified in subsection (c).

“(h) CALCULATION OF 60-DAY PERIOD.—The 60-day period referred to in subsection (d) shall be calculated by excluding the days on which either House of Congress is not in session because of an adjournment of the Congress sine die.

“SEC. 1212. REPORT ON EXPORTS OF HIGH PERFORMANCE COMPUTERS.

“(a) REPORT.—Not later than 60 days after the date of the enactment of this Act [Nov. 18, 1997], the President shall provide to the congressional committees specified in section 1215 a report identifying all exports of digital computers with a composite theoretical performance of more than 2,000 millions of theoretical operations per second (MTOPS) to all countries since January 25, 1996. For each export, the report shall identify—

“(1) whether an export license was applied for and whether one was granted;

“(2) the date of the transfer of the computer;

“(3) the United States manufacturer and exporter of the computer;

“(4) the MTOPS level of the computer; and

“(5) the recipient country and end user.

“(b) ADDITIONAL INFORMATION ON EXPORTS TO CERTAIN COUNTRIES.—In the case of exports to countries specified in subsection (c), the report under subsection (a) shall identify the intended end use for the exported computer and the assessment by the executive branch of whether the end user is a military end user or an end user involved in activities relating to nuclear, chemical, or biological weapons or missile technology. Information provided under this subsection may be submitted in classified form if necessary.

“(c) COVERED COUNTRIES.—For purposes of subsection (b), the countries specified in this subsection are—

“(1) the countries listed as ‘Computer Tier 3’ eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997; and

“(2) the countries listed in section 740.7(e) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997.

“SEC. 1213. POST-SHIPMENT VERIFICATION OF EXPORT OF HIGH PERFORMANCE COMPUTERS.

“(a) REQUIRED POST-SHIPMENT VERIFICATION.—The Secretary of Commerce shall conduct post-shipment verification of each digital computer with a composite theoretical performance of more than 2,000 millions of theoretical operations per second (MTOPS) that is exported from the United States, on or after the date of the enactment of this Act [Nov. 18, 1998], to a country specified in subsection (b).

“(b) COVERED COUNTRIES.—For purposes of subsection (a), the countries specified in this subsection are the countries listed as ‘Computer Tier 3’ eligible countries in section 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997, subject to modification by the President under section 1211(e).

“(c) ANNUAL REPORT.—The Secretary of Commerce shall submit to the congressional committees specified in section 1215 an annual report on the results of post-shipment verifications conducted under this section during the preceding year. Each such report shall include a list of all such items exported from the United States to such countries during the previous year and, with respect to each such export, the following:

“(1) The destination country.

“(2) The date of export.

“(3) The intended end use and intended end user.

“(4) The results of the post-shipment verification.

“(d) EXPLANATION WHEN VERIFICATION NOT CONDUCTED.—If a post-shipment verification has not been conducted in accordance with subsection (a) with respect to any such export during the period covered by a report, the Secretary shall include in the report for that period a detailed explanation of the reasons why such a post-shipment verification was not conducted.

“(e) ADJUSTMENT OF PERFORMANCE LEVELS.—Whenever a new composite theoretical performance level is established under section 1211(d), that level shall apply for purposes of subsection (a) of this section in lieu of the level set forth in subsection (a).

“SEC. 1214. GAO STUDY ON CERTAIN COMPUTERS; END USER INFORMATION ASSISTANCE.

“(a) IN GENERAL.—The Comptroller General of the United States shall submit to the congressional committees specified in section 1215 a study of the national security risks relating to the sale of computers with a composite theoretical performance of between 2,000 and 7,000 millions of theoretical operations per second (MTOPS) to end users in countries specified in subsection (c). The study shall also analyze any foreign availability of computers described in the preceding sentence and the impact of such sales on United States exporters.

“(b) END USER INFORMATION ASSISTANCE TO EXPORTERS.—The Secretary of Commerce shall establish a procedure by which exporters may seek information on questionable end users in countries specified in subsection (c) who are seeking to obtain computers described in subsection (a).

“(c) COVERED COUNTRIES.—For purposes of subsections (a) and (b), the countries specified in this subsection are the countries listed as ‘Computer Tier 3’ eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997.

“SEC. 1215. CONGRESSIONAL COMMITTEES.

“For purposes of sections 1211(d), 1212(a), 1213(c), and 1214(a) the congressional committees specified in those sections are the following:

“(1) The Committee on Banking, Housing, and Urban Affairs and the Committee on Armed Services of the Senate.

“(2) The Committee on International Relations [now Committee on Foreign Affairs] and the Committee on Armed Services of the House of Representatives.”

[Pub. L. 106-398, §1 [[div. A], title XII, §1234(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-331, provided that: “The amendments made by subsection (a) [amending section 1211 of Pub. L. 105-85, set out above] shall apply to any new composite theoretical performance level established for purposes of section 1211(a) of the National Defense Authorization Act for Fiscal Year 1998 [Pub. L. 105-85] that is submitted by the President pursuant to section 1211(d) of that Act on or after the date of the enactment of this Act [Oct. 30, 2000].”]

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

DELEGATION OF AUTHORITY UNDER THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1998

Memorandum of President of the United States, June 29, 2017, 82 F.R. 31239, provided:

Memorandum for the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Commerce the functions and authorities vested in the President under section 1211 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85) (the “Act”) [set out in a note above], to prepare and submit required reports and justifications to appropriate congressional committees on changes to levels governing prior notification for exports to Computer Tier 3 countries, or removal of a country from Computer Tier 3 status, in the Department of Commerce’s Export Administration Regulations.

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as section 1211 of the Act.

You are authorized and directed to publish this memorandum in the Federal Register.

DONALD J. TRUMP.

§§ 4605 to 4610. Repealed. Pub. L. 115-232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232

Section 4605, Pub. L. 96-72, §6, Sept. 29, 1979, 93 Stat. 513; Pub. L. 96-533, title I, §111, Dec. 16, 1980, 94 Stat. 3138; Pub. L. 97-145, §6, Dec. 29, 1981, 95 Stat. 1728; Pub. L. 99-64, title I, §108(a)-(g)(1), (h)-(j)(1), (k), (l)(1), July 12, 1985, 99 Stat. 131-136; Pub. L. 99-399, title V, §509(b), Aug. 27, 1986, 100 Stat. 874; Pub. L. 100-418, title II, §2423, Aug. 23, 1988, 102 Stat. 1358; Pub. L. 101-222, §4, Dec. 12, 1989, 103 Stat. 1897; Pub. L. 101-510, div. A, title XVII, §1702(a), Nov. 5, 1990, 104 Stat. 1739; Pub. L. 102-138, title V, §504(b), Oct. 28, 1991, 105 Stat. 724; Pub. L. 102-182, title III, §§304(b), 309(a), Dec. 4, 1991, 105 Stat. 1246, 1258; Pub. L. 103-236, title VII, §736, Apr. 30, 1994, 108 Stat. 506; Pub. L. 104-316, title I, §128(c), Oct. 19, 1996, 110 Stat. 3841; Pub. L. 105-277, div. G, title XIV, §1422(b)(7), Oct. 21, 1998, 112 Stat. 2681-793; Pub. L. 108-458, title VII, §7102(c)(1), Dec. 17, 2004, 118 Stat. 3776, related to prohibition or curtailment of exports to further United States foreign policy or to fulfill its international obligations.

Section 4606, Pub. L. 96-72, §7, Sept. 29, 1979, 93 Stat. 515; Pub. L. 99-64, title I, §§109, 110, July 12, 1985, 99 Stat. 137, 139; Pub. L. 100-180, div. A, title XII, §1246, Dec. 4, 1987, 101 Stat. 1165; Pub. L. 100-418, title II, §2424(a), Aug. 23, 1988, 102 Stat. 1359; Pub. L. 100-449, title III, §305(a), Sept. 28, 1988, 102 Stat. 1876, related to quantitative restrictions on exports of goods in order to carry out policy declaration in former section 4602 of this title.

Section 4607, Pub. L. 96-72, §8, Sept. 29, 1979, 93 Stat. 521, related to issuance of regulations prohibiting intentional boycotting of friendly countries. See section 4842 of this title.

Section 4608, Pub. L. 96-72, §9, Sept. 29, 1979, 93 Stat. 524, related to procedures for hardship relief from export controls.

Section 4609, 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, related to processing of export license applications. See section 4815 of this title.

Section 4610, Pub. L. 96-72, §11, Sept. 29, 1979, 93 Stat. 529; Pub. L. 97-145, §4(a)-(c), Dec. 29, 1981, 95 Stat. 1727; Pub. L. 99-64, title I, §112, July 12, 1985, 99 Stat. 146; Pub. L. 100-418, title II, §2426, Aug. 23, 1988, 102 Stat. 1361, related to penalties for violations. See section 4819 of this title.

Sections 4605 to 4610 were formerly classified to sections 2405 to 2410, respectively, of the former Appendix to this title prior to editorial reclassification and renumbering.

Prior sections 2405 to 2410 of the former Appendix to this title expired with the expiration of Pub. L. 91-184 on Sept. 30, 1979.

Section 2405, Pub. L. 91-184, §6, Dec. 30, 1969, 83 Stat. 844; Pub. L. 95-52, title I, §§103(d), 112, title II, §203(a), June 22, 1977, 91 Stat. 237, 240, 247; Pub. L. 95-223, title III, §301(b)(2), Dec. 28, 1977, 91 Stat. 1629, set forth provisions respecting violations and penalties.

Section 2406, Pub. L. 91-184, §7, Dec. 30, 1969, 83 Stat. 845; Pub. L. 95-52, title I, §§113(a), 114, title II, §201(c), June 22, 1977, 91 Stat. 241, 246, set forth enforcement procedures applicable to the Export Administration Act of 1969.

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, related to exemption from administrative procedure and judicial review provisions.

Section 2408, Pub. L. 91-184, §9, Dec. 30, 1969, 83 Stat. 846, related to providing information to exporters.

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, set forth requirements respecting semiannual reports to President and Congress.

Section 2410, Pub. L. 91-184, §11, Dec. 30, 1969, 83 Stat. 846; Pub. L. 95-52, title II, §204, June 22, 1977, 91 Stat. 247, defined “person” and “United States person” for purposes of the Export Administration Act of 1969.

§ 4611. Multilateral export control violations

(a) Determination by the President

The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that—

(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabilities in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Security Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after August 23, 1988.

(b) Sanctions

The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, sub-