

“(A) to improve enforcement and seek a common and stricter interpretation among MTCR members of MTCR principles;

“(B) to increase the number of countries that adhere to the MTCR; and

“(C) to increase information sharing among United States agencies and among governments on missile technology transfer, including export licensing, and enforcement activities.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2403, 2404, 2405, 2406, 2407, 2409, 2413 of this Appendix; title 10 section 2410i; title 26 sections 943, 993; title 42 section 6212.

§ 2403. General provisions

(a) Types of licenses

Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act [sections 2401 to 2420 of this Appendix], the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including, but not limited to, the following:

(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries, except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China. The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall have the responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant and periodic reviews of licensees and their compliance with the terms of licenses issued under this Act [sections 2401 to 2420 of this Appendix]. Factors such as the applicant's products or volume of business, or the consignees' geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

(B) A comprehensive operations license, authorizing exports and reexports of technology and related goods, including items from the list of militarily critical technologies developed pursuant to section 5(d) of this Act [section 2404(d) of this Appendix] which are included on the control list in accordance with that section, from a domestic concern to and among its foreign subsidiaries, affiliates, joint venturers, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled

countries (except the People's Republic of China), and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act [section 2411(a) of this Appendix] and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

(C) A project license, authorizing exports of goods or technology for a specified activity.

(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act [sections 2401 to 2420 of this Appendix].

(b) Control list

The Secretary shall establish and maintain a list (hereinafter in this Act [sections 2401 to 2420 of this Appendix] referred to as the "control list") stating license requirements (other than for general licenses) for exports of goods and technology under this Act [sections 2401 to 2420 of this Appendix].

(c) Foreign availability

In accordance with the provisions of this Act [sections 2401 to 2420 of this Appendix], the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in sufficient quantities and comparable in quality to those produced in the United States so as to render the controls ineffective in achieving their purposes, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. In complying with the provisions of this subsection, the President shall give strong emphasis to bilateral or multilateral negotiations to eliminate foreign availability. The Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

(d) Right of export

No authority or permission to export may be required under this Act [sections 2401 to 2420 of this Appendix], or under regulations issued under this Act [sections 2401 to 2420 of this Appendix], except to carry out the policies set

forth in section 3 of this Act [section 2402 of this Appendix].

(e) Delegation of authority

The President may delegate the power, authority, and discretion conferred upon him by this Act [sections 2401 to 2420 of this Appendix] to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act [sections 2401 to 2420 of this Appendix] may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act [sections 2401 to 2420 of this Appendix].

(f) Notification of public; consultation with business

The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act [sections 2401 to 2420 of this Appendix] with a view to encouraging trade. The Secretary shall meet regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of goods and technology.

(g) Fees

No fee may be charged in connection with the submission or processing of an export license application.

(Pub. L. 96-72, § 4, Sept. 29, 1979, 93 Stat. 505; Pub. L. 99-64, title I, § 104, July 12, 1985, 99 Stat. 122; Pub. L. 100-418, title II, §§ 2411, 2412, Aug. 23, 1988, 102 Stat. 1347.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, known as the Export Administration Act of 1979, which enacted sections 2401 to 2420 of this Appendix, amended section 1732 of Title 7, Agriculture, sections 2778 and 3108 of Title 22, Foreign Relations and Intercourse, section 993 of Title 26, Internal Revenue Code, and sections 6212 and 6274 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 2401, 2406, and 2409 of this Appendix and section 3108 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of this Appendix and Tables.

PRIOR PROVISIONS

A prior section 2403, Pub. L. 91-184, § 4, Dec. 30, 1969, 83 Stat. 842; Pub. L. 92-412, title I, § 104(a), (b)(1), Aug. 29, 1972, 86 Stat. 644, 645; Pub. L. 93-500, §§ 3(a), 5(a), 7, 9, 10, 12, Oct. 29, 1974, 88 Stat. 1552-1557; Pub. L. 95-52, title I, §§ 103(a), (b)(1)-(3), (c), 104-110, 113(b), title II, § 201(b), June 22, 1977, 91 Stat. 235-239, 241, 246; Pub. L. 95-223, title III, § 301(a), (b)(1), Dec. 28, 1977, 91 Stat. 1629; Pub. L. 95-384, § 6(d)(2), Sept. 26, 1978, 92 Stat. 731; Pub. L. 95-435, § 5(d), Oct. 10, 1978, 92 Stat. 1052; Pub. L. 96-67, § 2, Sept. 21, 1979, 93 Stat. 415, setting forth provisions relating to authorities to effectuate policies and limitations on exercise of authorities, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (a)(2)(A). Pub. L. 100-418, § 2412(1), inserted exception authorizing the Secretary to establish a type of distribution license appropriate to consignees in the People's Republic of China.

Subsec. (a)(2)(B). Pub. L. 100-418, § 2412(2), inserted “(except the People's Republic of China)” after “controlled countries”.

Subsec. (g). Pub. L. 100-418, § 2411, added subsec. (g).

1985—Subsec. (a)(2). Pub. L. 99-64, § 104(a), amended par. (2) generally, substituting provisions relating to validated licenses authorizing multiple exports including, but not limited to, distribution licenses, comprehensive operations licenses, project licenses, and service supply licenses, for former provisions which read: “A qualified general license, authorizing multiple exports, issued pursuant to an application by the exporter.”

Subsec. (b). Pub. L. 99-64, § 104(b), substituted “Control list” for “Commodity control list” in heading and, in text, substituted “control list” for “commodity control list” and “stating license requirements (other than for general licenses) for exports of goods and technology under this Act” for “consisting of any goods or technology subject to export controls under this Act”.

Subsec. (c). Pub. L. 99-64, § 104(c), substituted “sufficient” for “significant”, inserted “so as to render the controls ineffective in achieving their purposes”, and inserted provisions directing that, in complying with the provisions of this subsection, the President shall give strong emphasis to bilateral or multilateral negotiations to eliminate foreign availability, and that the Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

Subsec. (f). Pub. L. 99-64, § 104(d), amended subsec. (f) generally, substituting “representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of goods and technology” for “representatives of the business sector in order to obtain their views on export control policy and the foreign availability of goods and technology”.

EXECUTIVE ORDER NO. 11533

Ex. Ord. No. 11533, June 4, 1970, 35 F.R. 8799, as amended by Ex. Ord. No. 11907, Mar. 1, 1976, 41 F.R. 9085, which provided for the administration of the Export Administration Act of 1969, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out below.

EXECUTIVE ORDER NO. 11677

Ex. Ord. No. 11677, Aug. 1, 1972, 37 F.R. 15483, formerly set out as a note under this section, which provided for the regulation of exports, was revoked by Ex. Ord. No. 11683, Aug. 29, 1972, 37 F.R. 17813.

EXECUTIVE ORDER NO. 11683

Ex. Ord. No. 11683, Aug. 29, 1972, 37 F.R. 17813, which revoked Ex. Ord. No. 11677, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out below.

EXECUTIVE ORDER NO. 11798

Ex. Ord. No. 11798, Aug. 14, 1974, 39 F.R. 29567, which provided for the continuing regulation of exports, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out below.

EXECUTIVE ORDER NO. 11818

Ex. Ord. No. 11818, Nov. 5, 1974, 39 F.R. 39429, which provided for the continuing regulation of exports, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out below.

EXECUTIVE ORDER NO. 11940

Ex. Ord. No. 11940, Sept. 30, 1976, 41 F.R. 43707, which provided for the continuing regulation of exports, was

revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out below.

EX. ORD. NO. 12002. ADMINISTRATION OF EXPORT
ADMINISTRATION ACT

Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, as amended by Ex. Ord. No. 12755, Mar. 12, 1991, 56 F.R. 11057, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Except as provided in Section 2, the power, authority, and discretion conferred upon the President by the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), hereinafter referred to as the Act, are delegated to the Secretary of Commerce, with the power of successive re-delegation.

SEC. 2. (a) The power, authority and discretion conferred upon the President in Sections 4(h) and 4(l) of the Act are retained by the President.

(b) The power, authority and discretion conferred upon the President in Section 3(8) of the Act [section 2402(8) of this Appendix], which directs that every reasonable effort be made to secure the removal or reduction of assistance by foreign countries to international terrorists through cooperation and agreement, are delegated to the Secretary of State, with the power of successive redelegation.

SEC. 3. The Export Administration Review Board, hereinafter referred to as the Board, which was established by Executive Order No. 11533 of June 4, 1970, as amended, is hereby continued. The Board shall continue to have as its members, the Secretary of Commerce, who shall be Chairman of the Board, the Secretary of State, and the Secretary of Defense. The Secretary of Energy and the Director of the United States Arms Control and Disarmament Agency shall be members of the Board, and shall participate in meetings that consider issues involving nonproliferation of armaments and other issues within their respective statutory and policy-making authorities. The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence shall be non-voting members of the Board. No alternate Board members shall be designated, but the acting head or deputy head of any department or agency may serve in lieu of the head of the concerned department or agency. The Board may invite the heads of other United States Government departments or agencies, other than the agencies represented by the Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

SEC. 4. The Secretary of Commerce may from time to time refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary of Commerce shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or of the head of any other United States Government department or agency having any interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, concerns about the nonproliferation of armaments, and the domestic economy, and shall make recommendation thereon to the Secretary of Commerce.

SEC. 5. The President may at any time (a) prescribe rules and regulations applicable to the power, authority, and discretion referred to in this Order, and (b) communicate to the Secretary of Commerce such specific directives applicable thereto as the President shall determine. The Secretary of Commerce shall from time to time report to the President upon the administration of the Act and, as the Secretary deems necessary, may refer to the President recommendations

made by the Board under Section 4 of this Order. Neither the provisions of this section nor those of Section 4 shall be construed as limiting the provisions of Section 1 of this Order.

SEC. 6. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under, or continued in existence by, the Executive orders revoked in Section 7 of this Order, and not revoked administratively or legislatively, shall remain in full force and effect under this Order until amended, modified, or terminated by proper authority. The revocations in Section 7 of this Order shall not affect any violation of any rules, regulations, orders, licenses or other forms of administrative action under those Orders during the period those Orders were in effect.

SEC. 7. Executive Order No. 11533 of June 4, 1970, Executive Order No. 11683 of August 29, 1972, Executive Order No. 11798 of August 14, 1974, Executive Order No. 11818 of November 5, 1974, Executive Order No. 11907 of March 1, 1976, and Executive Order No. 11940 of September 30, 1976 are hereby revoked.

[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.]

EX. ORD. NO. 12214. ADMINISTRATION OF EXPORT
ADMINISTRATION ACT

Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, provided: By the authority vested in me as President of the United States of America by Section 4(e) of the Export Administration Act of 1979 (Public Law 96-72; 50 U.S.C. App. 2403(e)), it is hereby ordered as follows:

1-101. Except as provided in Section 1-102, the functions conferred upon the President by the provisions of the Export Administration Act of 1979, hereinafter referred to as the Act (Public Law 96-72; 50 U.S.C. App. 2401 et seq.), are delegated to the Secretary of Commerce.

1-102. (a) The functions conferred upon the President by Sections 4(e), 5(c), 5(f)(1), 5(h)(6), 6(k), 7(d)(2), 10(g) and 20 of the Act [50 U.S.C. App. 2403(e), 2404(c), 2404(f)(1), 2404(h)(6), 2405(k), 2406(d)(2), 2409(g) and 2419] are reserved to the President.

(b) The functions conferred upon the President by Sections 5(f)(4), 5(i), and 6(g) of the Act [50 U.S.C. App. 2404(f)(4), 2404(i), and 2405(g)] are delegated to the Secretary of State.

1-103. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued or otherwise taken under, or continued in existence by, Section 21 of the Act [50 U.S.C. App. 2420] or Executive Order No. 12002 [set out above], and not revoked administratively or legislatively, shall remain in full force and effect until amended, modified, or terminated by proper authority. This Order does not supersede or otherwise affect Executive Order No. 12002.

1-104. Except to the extent inconsistent with this Order, all actions previously taken pursuant to any function delegated or assigned by this Order shall be deemed to have been taken and authorized by this Order.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12264

Ex. Ord. No. 12264, Jan. 15, 1981, 46 F.R. 4659, which related to the Federal policy regarding the export of banned or significantly restricted substances, was revoked by Ex. Ord. No. 12290, Feb. 17, 1981, 46 F.R. 12943, set out below.

EX. ORD. NO. 12290. IMPLEMENTATION OF EXPORT ADMINISTRATION ACT WITH MINIMUM REGULATORY BURDEN

Ex. Ord. No. 12290, Feb. 17, 1981, 46 F.R. 12943, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to ensure that the Export Administration Act of

1979 [sections 2401 to 2420 of this Appendix] is implemented with the minimum regulatory burden. Executive Order No. 12264 of January 15, 1981, entitled "On Federal Policy Regarding the Export of Banned or Significantly Restricted Substances," is hereby revoked.

RONALD REAGAN.

CONTINUATION OF EXPORT CONTROL REGULATIONS

Provisions relating to continued effectiveness of the Export Administration Act of 1979, 50 App. U.S.C. 2401 *et seq.*, and to issuance and continued effectiveness of rules, regulations, orders, licenses, and other forms of administrative action and delegations of authority relating to administration of that Act, were contained in the following:

Ex. Ord. No. 12924, Aug. 19, 1994, 59 F.R. 43437, set out as a note under section 1701 of Title 50, War and National Defense.

Ex. Ord. No. 12923, June 30, 1994, 59 F.R. 34551, formerly set out as a note under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12924, § 4, Aug. 19, 1994, 59 F.R. 43438.

Ex. Ord. No. 12867, Sept. 30, 1993, 58 F.R. 51747, set out as a note under section 1701 of Title 50, War and National Defense.

Ex. Ord. No. 12730, Sept. 30, 1990, 55 F.R. 40373, formerly set out as a note under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12867, Sept. 30, 1993, 58 F.R. 51747.

Ex. Ord. No. 12525, July 12, 1985, 50 F.R. 28757, set out as a note under section 1701 of Title 50.

Ex. Ord. No. 12470, Mar. 30, 1984, 49 F.R. 13099, formerly set out as a note under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12525, July 12, 1985, 50 F.R. 28757.

Ex. Ord. No. 12451, Dec. 20, 1983, 48 F.R. 56563, set out as a note under section 1701 of Title 50.

Ex. Ord. No. 12444, Oct. 14, 1983, 48 F.R. 48215, formerly set out as a note under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12451, Dec. 20, 1983, 48 F.R. 56563.

EX. ORD. NO. 12981. ADMINISTRATION OF EXPORT CONTROLS

Ex. Ord. No. 12981, Dec. 5, 1995, 60 F.R. 62981, as amended by Ex. Ord. No. 13020, Oct. 12, 1996, 61 F.R. 54079; Ex. Ord. No. 13026, §1(b), Nov. 15, 1996, 61 F.R. 58767; Ex. Ord. No. 13117, Mar. 31, 1999, 64 F.R. 16591, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) ("the Act"), and in order to take additional steps with respect to the national emergency described and declared in Executive Order No. 12924 of August 19, 1994 [50 U.S.C. 1701 note], and continued on August 15, 1995, I, WILLIAM J. CLINTON, President of the United States of America, find that it is necessary for the procedures set forth below to apply to export license applications submitted under the Act and the Export Administration Regulations (15 C.F.R. Part 730 *et seq.*) ("the Regulations") or under any renewal of, or successor to, the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*) ("the Export Administration Act"), and the Regulations. Accordingly, it is hereby ordered as follows:

SECTION 1. *License Review.* To the extent permitted by law and consistent with Executive Order No. 12924 of August 19, 1994, the power, authority, and discretion conferred upon the Secretary of Commerce ("the Secretary") under the Export Administration Act to require, review, and make final determinations with regard to export licenses, documentation, and other forms of information submitted to the Department of Commerce pursuant to the Act and the Regulations or under any renewal of, or successor to, the Export Administration Act and the Regulations, with the power of successive redelegation, shall continue. The Depart-

ments of State, Defense, and Energy each shall have the authority to review any export license application submitted to the Department of Commerce pursuant to the Act and the Regulations or under any renewal of, or successor to, the Export Administration Act and the Regulations. The Secretary may refer license applications to other United States Government departments or agencies for review as appropriate. In the event that a department or agency determines that certain types of applications need not be referred to it, such department or agency shall notify the Department of Commerce as to the specific types of such applications that it does not wish to review. All departments or agencies shall promptly respond, on a case-by-case basis, to requests from other departments or agencies for historical information relating to past license applications.

SEC. 2. *Determinations.* (a) All license applications submitted under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, shall be resolved or referred to the President no later than 90 calendar days after registration of the completed license application.

(b) The following actions related to processing a license application submitted under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations shall not be counted in calculating the time periods prescribed in this order:

(1) *Agreement of the Applicant.* Delays upon which the Secretary and the applicant mutually agree.

(2) *Preliminary Checks.* Preliminary checks through government channels that may be required to establish the identity and reliability of the recipient of items controlled under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, provided that:

(A) the need for such preliminary check is established by the Secretary, or by another department or agency if the request for preliminary check is made by such department or agency;

(B) the Secretary requests the preliminary check within 5 days of the determination that it is necessary; and

(C) the Secretary completes the analysis of the result of the preliminary check within 5 days.

(3) *Requests for Government-To-Government Assurances.* Requests for government-to-government assurances of suitable end-use of items approved for export under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, when failure to obtain such assurances would result in rejection of the application, provided that:

(A) the request for such assurances is sent to the Secretary of State within 5 days of the determination that the assurances are required;

(B) the Secretary of State initiates the request of the relevant government within 10 days thereafter; and

(C) the license is issued within 5 days of the Secretary's receipt of the requested assurances. Whenever such preliminary checks and assurances are not requested within the time periods set forth above, they must be accomplished within the time periods established by this section.

(4) *Multilateral Reviews.* Multilateral review of a license application as provided for under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, as long as multilateral review is required by the relevant multilateral regime.

(5) *Consultations.* Consultation with other governments, if such consultation is provided for by a relevant multilateral regime or bilateral arrangement as a precondition for approving a license.

SEC. 3. *Initial Processing.* Within 9 days of registration of any license application, the Secretary shall, as appropriate:

(a) request additional information from the applicant. The time required for the applicant to supply the additional information shall not be counted in calculating the time periods prescribed in this section.

(b) refer the application and pertinent information to agencies or departments as stipulated in section 1 of

this order, and forward to the agencies any relevant information submitted by the applicant that could not be reduced to electronic form.

(c) assure that the stated classification on the application is correct; return the application if a license is not required; and, if referral to other departments or agencies is not required, grant the application or notify the applicant of the Secretary's intention to deny the application.

SEC. 4. *Department or Agency Review.* (a) Each reviewing department or agency shall specify to the Secretary, within 10 days of receipt of a referral as specified in subsection 3(b), any information not in the application that would be required to make a determination, and the Secretary shall promptly request such information from the applicant. If, after receipt of the information so specified or other new information, a reviewing department or agency concludes that additional information would be required to make a determination, it shall promptly specify that additional information to the Secretary, and the Secretary shall promptly request such information from the applicant. The time that may elapse between the date the information is requested by the reviewing department or agency and the date the information is received by the reviewing department or agency shall not be counted in calculating the time periods prescribed in this order. Such information specified by reviewing departments or agencies is in addition to any information that may be requested by the Department of Commerce on its own initiative during the first 9 days after registration of an application.

(b) Within 30 days of receipt of a referral and all required information, a department or agency shall provide the Secretary with a recommendation either to approve or deny the license application. As appropriate, such recommendation may be with the benefit of consultation and discussions in interagency groups established to provide expertise and coordinate interagency consultation. A recommendation that the Secretary deny a license shall include a statement of the reasons for such recommendation that are consistent with the provisions of the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations and shall cite both the statutory and the regulatory bases for the recommendation to deny. A department or agency that fails to provide a recommendation within 30 days with a statement of reasons and the statutory and regulatory bases shall be deemed to have no objection to the decision of the Secretary.

SEC. 5. *Interagency Dispute Resolution.* (a) *Committees.* (1)(A) *Export Administration Review Board.* The Export Administration Review Board ("the Board"), which was established by Executive Order No. 11533 of June 4, 1970 [formerly set out above], and continued in Executive Order No. 12002 of July 7, 1977 [set out above], is hereby continued. The Board shall have as its members, the Secretary, who shall be Chair of the Board, the Secretary of State, the Secretary of Defense, and the Secretary of Energy[.] The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence shall be nonvoting members of the Board. No alternate Board members shall be designated, but the acting head or deputy head of any member department or agency may serve in lieu of the head of the concerned department or agency. The Board may invite the heads of other United States Government departments or agencies, other than the departments or agencies represented by the Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

(B) The Secretary may, from time to time, refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or the head of any other United States Government department or agency having any

interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, the domestic economy, and concerns about the proliferation of armaments, weapons of mass destruction, missile delivery systems, and advanced conventional weapons and shall make recommendations thereon to the Secretary.

(2) *Advisory Committee on Export Policy.* An Advisory Committee on Export Policy ("ACEP") is established and shall have as its members the Assistant Secretary of Commerce for Export Administration, who shall be Chair of the ACEP, and Assistant Secretary-level representatives of the Departments of State, Defense, and Energy[.] Appropriate representatives of the Joint Chiefs of Staff and of the Nonproliferation Center of the Central Intelligence Agency shall be nonvoting members of the ACEP. Representatives of the departments or agencies shall be the appropriate Assistant Secretary or equivalent (or appropriate acting Assistant Secretary or equivalent in lieu of the Assistant Secretary or equivalent) of the concerned department or agency, or appropriate Deputy Assistant Secretary or equivalent (or the appropriate acting Deputy Assistant Secretary or equivalent in lieu of the Deputy Assistant Secretary or equivalent) of the concerned department or agency. Regardless of the department or agency representative's rank, such representative shall speak and vote at the ACEP on behalf of the appropriate Assistant Secretary or equivalent of such department or agency. The ACEP may invite Assistant Secretary-level representatives of other United States Government departments or agencies, other than the departments and agencies represented by the ACEP members, to participate in the activities of the ACEP when matters of interest to such departments or agencies are under consideration.

(3)(A) *Operating Committee.* An Operating Committee ("OC") of the ACEP is established. The Secretary shall appoint its Chair, who shall also serve as Executive Secretary of the ACEP. Its other members shall be representatives of appropriate agencies in the Departments of Commerce, State, Defense, and Energy[.] The appropriate representatives of the Joint Chiefs of Staff and the Nonproliferation Center of the Central Intelligence Agency shall be nonvoting members of the OC. The OC may invite representatives of other United States Government departments or agencies, other than the departments and agencies represented by the OC members, to participate in the activities of the OC when matters of interest to such departments or agencies are under consideration.

(B) The OC shall review all license applications on which the reviewing departments and agencies are not in agreement. The Chair of the OC shall consider the recommendations of the reviewing departments and agencies and inform them of his or her decision on any such matters within 14 days after the deadline for receiving department and agency recommendations. However, for license applications concerning commercial communication satellites and hot-section technologies for the development, production, and overhaul of commercial aircraft engines that are transferred from the United States Munitions List to the Commerce Control List pursuant to regulations issued by the Departments of Commerce and State after the date of this order, the Chair of the OC shall inform reviewing departments and agencies of the majority vote decision of the OC. As described below, any reviewing department or agency may appeal the decision of the Chair of the OC, or the majority vote decision of the OC in cases concerning the commercial communication satellites and hot-section technologies described above, to the Chair of the ACEP. In the absence of a timely appeal, the Chair's decision (or the majority vote decision in the case of license applications concerning the commercial communication satellites and hot-section technologies described above) will be final.

(b) *Resolution Procedures.* (1) If any department or agency disagrees with a licensing determination of the

Department of Commerce made through the Chair of the OC (or a majority vote decision of the OC in the case of license applications concerning the commercial communication satellites and the hot-section technologies described in section 5(a)(3)(B)), it may appeal the matter to the ACEP for resolution. A department or agency must appeal a matter within 5 days of such a decision. Appeals must be in writing from an official appointed by the President, by and with the advice and consent of the Senate, or an officer properly acting in such capacity, and must cite both the statutory and the regulatory bases for the appeal. The ACEP shall review all departments' and agencies' information and recommendations, and the Chair of the ACEP shall inform the reviewing departments and agencies of the majority vote decision of the ACEP within 11 days from the date of receiving notice of the appeal. Within 5 days of the majority vote decision, any dissenting department or agency may appeal the decision by submitting a letter from the head of the department or agency to the Secretary in his or her capacity as the Chair of the Board. Such letter shall cite both the statutory and the regulatory bases for the appeal. Within the same 5-day period, the Secretary may call a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the majority vote decision of the ACEP shall be final.

(2) The Board shall review all departments' and agencies' information and recommendations, and such other export control matters as may be appropriate. The Secretary shall inform the reviewing departments and agencies of the majority vote of the Board within 11 days from the date of receiving notice of appeal. Within 5 days of the decision, any department or agency dissenting from the majority vote decision of the Board may appeal the decision by submitting a letter from the head of the dissenting department or agency to the President. In the absence of a timely appeal, the majority vote decision of the Board shall be final.

SEC. 6. *Encryption Products.* In conducting the license review described in section 1 above, with respect to export controls of encryption products that are or would be, on November 15, 1996, designated as defense articles in Category XIII of the United States Munitions List and regulated by the United States Department of State pursuant to the Arms Export Control Act, 22 U.S.C. 2778 *et seq.*, but that subsequently are placed on the Commerce Control List in the Export Administration Regulations, the Departments of State, Defense, Energy, and Justice shall have the opportunity to review any export license application submitted to the Department of Commerce. The Department of Justice shall, with respect to such encryption products, be a voting member of the Export Administration Review Board described in section 5(a)(1) of this order and of the Advisory Committee on Export Policy described in section 5(a)(2) of this order. The Department of Justice shall be a full member of the Operating Committee of the ACEP described in section 5(a)(3) of this order, and of any other committees and consultation groups reviewing export controls with respect to such encryption products.

SEC. 7. The license review process in this order shall take effect beginning with those license applications registered by the Secretary 60 days after the date of this order and shall continue in effect to the extent not inconsistent with any renewal of the Export Administration Act, or with any successor to that Act.

SEC. 8. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and 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.

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Dis-

armament Agency, see section 6511 *et seq.* of Title 22, Foreign Relations and Intercourse.]

EX. ORD. NO. 13026. ADMINISTRATION OF EXPORT CONTROLS ON ENCRYPTION PRODUCTS

Ex. Ord. No. 13026, Nov. 15, 1996, 61 F.R. 58767, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and in order to take additional steps with respect to the national emergency described and declared in Executive Order 12924 of August 19, 1994 [50 U.S.C. 1701 note], and continued on August 15, 1995, and on August 14, 1996, I, WILLIAM J. CLINTON, President of the United States of America, have decided that the provisions set forth below shall apply to administration of the export control system maintained by the Export Administration Regulations, 15 CFR Part 730 *et seq.* ("the EAR"). Accordingly, it is hereby ordered as follows:

SECTION 1. *Treatment of Encryption Products.* In order to provide for appropriate controls on the export and foreign dissemination of encryption products, export controls of encryption products that are or would be, on this date, designated as defense articles in Category XIII of the United States Munitions List and regulated by the United States Department of State pursuant to the Arms Export Control Act, 22 U.S.C. 2778 *et seq.* ("the AECA"), but that subsequently are placed on the Commerce Control List in the EAR, shall be subject to the following conditions: (a) I have determined that the export of encryption products described in this section could harm national security and foreign policy interests even where comparable products are or appear to be available from sources outside the United States, and that facts and questions concerning the foreign 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), 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) 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2404, 2406, 2409, 2411, 2413, 2414 of this Appendix.

§ 2403–1. Repealed. Pub. L. 103–199, title II, § 203(b), Dec. 17, 1993, 107 Stat. 2322

Section, Pub. L. 93–365, title VII, § 709, Aug. 5, 1974, 88 Stat. 408, related to review by Secretary of Defense of applications for export to controlled country of any goods, technology, or industrial techniques developed with Department of Defense funds for purpose of determining whether such export would significantly increase military capability of such country.

§§ 2403–1a, 2403a. Omitted

CODIFICATION

Section 2403–1a, Pub. L. 91–184, § 4A, as added Pub. L. 95–52, title II, § 201(a), June 22, 1977, 91 Stat. 244, which set forth provisions prohibiting United States persons from participating in foreign boycotts and administrative enforcement of such prohibitions, expired on Sept. 3, 1979.

Section 2403a, Pub. L. 91–184, § 4B, formerly § 4A, as added Pub. L. 93–500, § 8, Oct. 29, 1974, 88 Stat. 1554, renumbered Pub. L. 95–52, title II, § 201(a), June 22, 1977, 91 Stat. 244, which set forth procedures applicable for relief from export controls upon showing of hardship, expired on Sept. 30, 1979.

§ 2404. National security controls

(a) Authority

(1) In order to carry out the policy set forth in section 3(2)(A) of this Act [section 2402(2)(A) of this Appendix], the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. For purposes of the preceding sentence, the term “affiliates” includes both governmental entities and commercial entities that are controlled in fact by controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appro-

priate, and shall be implemented by means of export licenses described in section 4(a) of this Act [section 2403(a) of this Appendix].

(2) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States.

(4)(A) No authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States to any country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee, or pursuant to an agreement described in subsection (k) of this section. The Secretary may require any person reexporting any goods or technology under this subparagraph to notify the Secretary of such reexports.

(B) Notwithstanding subparagraph (A), the Secretary may require authority or permission to reexport the following:

- (i) supercomputers;
- (ii) goods or technology for sensitive nuclear uses (as defined by the Secretary);
- (iii) devices for surreptitious interception of wire or oral communications; and
- (iv) goods or technology intended for such end users as the Secretary may specify by regulation.

(5)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States from any country when the goods or technology to be reexported are incorporated in another good and—

- (i) the value of the controlled United States content of that other good is 25 percent or less of the total value of the good; or
- (ii) the export of the goods or technology to a controlled country would require only notification of the participating governments of the Coordinating Committee.

For purposes of this paragraph, the “controlled United States content” of a good means those goods or technology subject to the jurisdiction of the United States which are incorporated in the good, if the export of those goods or technology from the United States to a country, at the time that the good is exported to that country, would require a validated license.

(B) The Secretary may by regulation provide that subparagraph (A) does not apply to the re-