

§ 2411a. Omitted

CODIFICATION

A prior section 2411a, Pub. L. 91-184, § 13, as added Pub. L. 95-52, title I, § 102, June 22, 1977, 91 Stat. 235, authorizing appropriations to carry out purposes of provisions of Export Administration Act of 1969, expired on Sept. 30, 1979.

§ 2412. Administrative procedure and judicial review**(a) Exemption**

Except as provided in section 11(c)(2) [section 2410(c)(2) of this Appendix] and subsection (c) of this section, the functions exercised under this Act [sections 2401 to 2420 of this Appendix] are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) Public participation

It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act [sections 2401 to 2420 of this Appendix] be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act [sections 2401 to 2420 of this Appendix] is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

(c) Procedures relating to civil penalties and sanctions

(1) In any case in which a civil penalty or other civil sanction (other than a temporary denial order or a penalty or sanction for a violation of section 8 [section 2407 of this Appendix]) is sought under section 11 of this Act [section 2410 of this Appendix], the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Subject to the provisions of this subsection, any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United States Code. With the approval of the administrative law judge, the Government may present evidence in camera in the presence of the charged party or his or her representative. After the hearing, the administrative law judge shall make findings of fact and conclusions of law in a written decision, which shall be referred to the Secretary. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after receiving the decision. The order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3).

(2) The proceedings described in paragraph (1) shall be concluded within a period of 1 year after the complaint is submitted, unless the administrative law judge extends such period for good cause shown.

(3) The order of the Secretary under paragraph (1) shall be final, except that the charged party may, within 15 days after the order is issued, appeal the order in the United States Court of Ap-

peals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may, while the appeal is pending, stay the order of the Secretary. The court may review only those issues necessary to determine liability for the civil penalty or other sanction involved. In an appeal filed under this paragraph, the court shall set aside any finding of fact for which the court finds there is not substantial evidence on the record and any conclusion of law which the court finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(4) An administrative law judge referred to in this subsection shall be appointed by the Secretary from among those considered qualified for selection and appointment under section 3105 of title 5, United States Code. Any person who, for at least 2 of the 10 years immediately preceding the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985], has served as a hearing commissioner of the Department of Commerce shall be included among those considered as qualified for selection and appointment to such position.

(d) Imposition of temporary denial orders

(1) In any case in which it is necessary, in the public interest, to prevent an imminent violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix], the Secretary may, without a hearing, issue an order temporarily denying United States export privileges (hereinafter in this subsection referred to as a "temporary denial order") to a person. A temporary denial order may be effective no longer than 180 days unless renewed in writing by the Secretary for additional 180-day periods in order to prevent such an imminent violation, except that a temporary denial order may be renewed only after notice and an opportunity for a hearing is provided.

(2) A temporary denial order shall define the imminent violation and state why the temporary denial order was granted without a hearing. The person or persons subject to the issuance or renewal of a temporary denial order may file an appeal of the issuance or renewal of the temporary denial order with an administrative law judge who shall, within 10 working days after the appeal is filed, recommend that the temporary denial order be affirmed, modified, or vacated. Parties may submit briefs and other material to the judge. The recommendation of the administrative law judge shall be submitted to the Secretary who shall either accept, reject, or modify the recommendation by written order within 5 working days after receiving the recommendation. The written order of the Secretary under the preceding sentence shall be final and is not subject to judicial review, except as provided in paragraph (3). The temporary denial order shall be affirmed only if it is reasonable to believe that the order is required in the public interest to prevent an imminent violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix]. All materials submitted to the administrative law judge and the Secretary shall constitute the

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