

termination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) Waiver

(1) Criterion for waiver

The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) Notification of and report to Congress

If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) Definition of foreign person

For the purposes of this section, the term “foreign person” means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

(Pub. L. 96-72, §11C, as added and amended Pub. L. 102-182, title III, §§305(a), 309(b)(1), Dec. 4, 1991, 105 Stat. 1247, 1258.)

PRIOR PROVISIONS

A prior section 2410c, Pub. L. 96-72, §11C, as added Pub. L. 102-138, title V, §505(a), Oct. 28, 1991, 105 Stat. 724, contained provisions substantially identical to those added by section 305(a) of Pub. L. 102-182, prior to repeal by Pub. L. 102-182, §309(a).

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102-182, §309(b)(1), substituted “October 28, 1991” for reference to the “date of the enactment of this section” which was enacted Dec. 4, 1991.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State, with certain exceptions, by section 1(a) of Ex. Ord. No. 12851, June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of Title 22, Foreign Relations and Intercourse.

§ 2411. Enforcement

(a) General authority

(1) To the extent necessary or appropriate to the enforcement of this Act [sections 2401 to 2420 of this Appendix] or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 [former sections 2021 to 2032 of this Appendix] or the Export Administration Act of 1969 [former sections 2401 to 2413 of this Appendix], the head of any department or

agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department or agency (and such officers or employees) may obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. In addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of section 8 of this Act [section 2407 of this Appendix].

(2)(A) Subject to subparagraph (B) of this paragraph, the United States Customs Service is authorized, in the enforcement of this Act [sections 2401 to 2420 of this Appendix], to search, detain (after search), and seize goods or technology at those ports of entry or exit from the United States where officers of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

(B) An officer of the United States Customs Service may do the following in carrying out enforcement authority under this Act [sections 2401 to 2420 of this Appendix]:

(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act [sections 2401 to 2420 of this Appendix].

(ii) Search any package or container in which such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act [sections 2401 to 2420 of this Appendix].

(iii) Detain (after search) or seize and secure for trial any goods or technology on or about such vehicle, vessel, aircraft, or person, or in

such package or container, if such officer has probable cause to believe the goods or technology has been, is being, or is about to be exported from the United States in violation of this Act [sections 2401 to 2420 of this Appendix].

(iv) Make arrests without warrant for any violation of this Act [sections 2401 to 2420 of this Appendix] committed in his or her presence or view or if the officer has probable cause to believe that the person to be arrested has committed or is committing such a violation.

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws. The Customs Service may not detain for more than 20 days any shipment of goods or technology eligible for export under a general license under section 4(a)(3) [section 2403(a)(3) of this Appendix]. In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export license authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 20-day period. At the end of that 20-day period, the Customs Service shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.

(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall have the responsibility for the enforcement of section 8 of this Act [section 2407 of this Appendix] and, in the enforcement of the other provisions of this Act [sections 2401 to 2420 of this Appendix], the Secretary is authorized to search, detain (after search), and seize goods or technology at those places within the United States other than those ports specified in paragraph (2)(A) of this subsection. The search, detention (after search), or seizure of goods or technology at those ports and places specified in paragraph (2)(A) may be conducted by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

(B) The Secretary may designate any employee of the Office of Export Enforcement of the Department of Commerce to do the following in carrying out enforcement authority under this Act [sections 2401 to 2420 of this Appendix]:

(i) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of the provisions of this Act [sections 2401 to 2420 of this Appendix].

(ii) Make arrests without warrant for any violation of this Act [sections 2401 to 2420 of this Appendix] committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing such a violation.

(iii) Carry firearms in carrying out any activity described in clause (i) or (ii).

(4) The authorities first conferred by the Export Administration Amendments Act of 1985

under paragraph (3) shall be exercised pursuant to guidelines approved by the Attorney General. Such guidelines shall be issued not later than 120 days after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985].

(5) All cases involving violations of this Act [sections 2401 to 2420 of this Appendix] shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 11(c) of this Act [section 2410(c) of this Appendix], or to the Attorney General for criminal action in accordance with this Act [sections 2401 to 2420 of this Appendix].

(6) Notwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export controls under this Act [sections 2401 to 2420 of this Appendix] not more than \$12,000,000 in the fiscal year 1985 and not more than \$14,000,000 in the fiscal year 1986.

(7) Not later than 90 days after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985], the Secretary, with the concurrence of the Secretary of the Treasury, shall publish in the Federal Register procedures setting forth, in accordance with this subsection, the responsibilities of the Department of Commerce and the United States Customs Service in the enforcement of this Act [sections 2401 to 2420 of this Appendix]. In addition, the Secretary, with the concurrence of the Secretary of the Treasury, may publish procedures for the sharing of information in accordance with subsection (c)(3) of this section, and procedures for the submission to the appropriate departments and agencies by private persons of information relating to the enforcement of this Act [sections 2401 to 2420 of this Appendix].

(8) For purposes of this section, a reference to the enforcement of this Act [sections 2401 to 2420 of this Appendix] or to a violation of this Act [sections 2401 to 2420 of this Appendix] includes a reference to the enforcement or a violation of any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix].

(b) Immunity

No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(c) Confidentiality

(1) Except as otherwise provided by the third sentence of section 8(b)(2) [section 2407(b)(2) of this Appendix] and by section 11(c)(2)(C) of this Act [section 2410(c)(2)(C) of this Appendix], information obtained under this Act [sections 2401 to 2420 of this Appendix] on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. In-

formation obtained under this Act [sections 2401 to 2420 of this Appendix] after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act [sections 2401 to 2420 of this Appendix] shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act [sections 2401 to 2420 of this Appendix] had not been enacted.

(2) Nothing in this Act [sections 2401 to 2420 of this Appendix] shall be construed as authorizing the withholding of information from the Congress or from the Government Accountability Office. All information obtained at any time under this Act [sections 2401 to 2420 of this Appendix] or previous Acts regarding the control of exports, including any report or license application required under this Act [sections 2401 to 2420 of this Appendix], shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act [sections 2401 to 2420 of this Appendix] or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act 1921 [31 U.S.C. 716], be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the Government Accountability Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the Government Accountability Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3) Any department or agency which obtains information which is relevant to the enforcement of this Act [sections 2401 to 2420 of this Appendix], including information pertaining to any investigation, shall furnish such information to each department or agency with enforcement responsibilities under this Act [sections 2401 to 2420 of this Appendix] to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this paragraph shall not apply to information sub-

ject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1986 [26 U.S.C. 6103(b)], may be disclosed only as authorized by such section. The Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions. The Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one another and with the heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

(d) Reporting requirements

In the administration of this Act [sections 2401 to 2420 of this Appendix], reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act [sections 2401 to 2420 of this Appendix] to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(e) Simplification of regulations

The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h) [section 2404(h) of this Appendix], shall review the regulations issued under this Act [sections 2401 to 2420 of this Appendix] and the commodity control list in order to determine how compliance with the provisions of this Act [sections 2401 to 2420 of this Appendix] can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

(Pub. L. 96-72, §12, Sept. 29, 1979, 93 Stat. 530; Pub. L. 97-145, §§3, 5, Dec. 29, 1981, 95 Stat. 1727, 1728; Pub. L. 99-64, title I, §113, July 12, 1985, 99 Stat. 148; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-418, title II, §2427, Aug. 23, 1988, 102 Stat. 1361; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The Export Control Act of 1949, referred to in subsec. (a)(1), is act Feb. 26, 1949, ch. 11, 63 Stat. 7, as amended, which was classified to sections 2021 to 2032 of this Appendix, and terminated on Dec. 31, 1969, pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.

The Export Administration Act of 1969, referred to in subsec. (a)(1), is Pub. L. 91-184, Dec. 30, 1969, 83 Stat. 841, as amended, which was classified generally to sections 2401 to 2413 of this Appendix, and terminated on Sept. 30, 1979, pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.

The Export Administration Amendments Act of 1985, referred to in subsec. (a)(4), is titles I and II of Pub. L. 99-64, July 12, 1985, 99 Stat. 120, which, among other amendments, enacted par. (3) of subsec. (a) of this section. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 2401 of this Appendix and Tables.

Section 313 of the Budget and Accounting Act 1921, referred to in subsec. (c)(2), is section 313 of the Act of June 10, 1921, ch. 18, title III, 42 Stat. 26, which was classified to section 54 of former Title 31, and which was repealed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, and reenacted by the first section thereof as section 716 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 2411, Pub. L. 91-184, § 12, Dec. 30, 1969, 83 Stat. 846, relating to the effect on the Act of Feb. 15, 1936 (49 Stat. 1140) and section 414 of the Mutual Security Act of 1934 (22 U.S.C. 1934) provisions of the Export Administration Act of 1969, expired on Sept. 30, 1979.

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” wherever appearing.

1988—Subsec. (a)(2)(B). Pub. L. 100-418 inserted at end “The Customs Service may not detain for more than 20 days any shipment of goods or technology eligible for export under a general license under section 4(a)(3). In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export license authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 20-day period. At the end of that 20-day period, the Customs Service shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.”

1986—Subsec. (c)(3). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1985—Subsec. (a)(1). Pub. L. 99-64, § 113(a), designated existing provisions of subsec. (a) as par. (1), substituted “such investigations within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department or agency (and such officers or employees) may” for “such investigations and”, and “a district court of the United States,” for “the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and”, and inserted sentence providing that in addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of section 8 of this Act.

Subsec. (a)(2) to (8). Pub. L. 99-64, § 113(a)(5), added pars. (2) to (8).

Subsec. (c)(3). Pub. L. 99-64, § 113, substituted “Any department or agency which obtains information which is relevant to the enforcement of this Act, including information pertaining to any investigation, shall furnish such information to each department or agency” for “Departments or agencies which obtain information which is relevant to the enforcement of this Act shall furnish such information to the department or agency”, and inserted sentences providing that the Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions and that the Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one another and with the heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

1981—Subsec. (c)(2). Pub. L. 97-145, § 5, substantially reenacted existing provisions, inserted provisions that

the information may not be withheld from the General Accounting Office, and that the information be made available to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized to have access to such information which is submitted on a confidential basis and from which any individual can be identified, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with section 54 of title 31, be made available only by that agency.

Subsec. (c)(3). Pub. L. 97-145, § 3, added par. (3).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 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