§4614. Enforcement

(a) General authority

(1) To the extent necessary or appropriate to the enforcement of this chapter or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, 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 U.S. Customs and Border Protection (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, 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 4607 of this title.

(2)(A) Subject to subparagraph (B) of this paragraph, the United States Customs Service is authorized, in the enforcement of this chapter, 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 chapter:

(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 chapter.

(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 chapter.

(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 chapter.

(iv) Make arrests without warrant for any violation of this chapter 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 4603(a)(3) of this title. 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 4607 of this title and, in the enforcement of the other provisions of this chapter, 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 Secretary may conduct, by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of U.S. Customs and Border Protection 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 follow-
ing in carrying out enforcement authority under
this chapter:

(i) Execute any warrant or other process is-
sued by a court or officer of competent jurisdic-
tion with respect to the enforcement of the
provisions of this chapter.

(ii) Make arrests without warrant for any
violation of this chapter committed in his or
her presence or view, or if the officer or em-
ployee 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 ac-
tivity described in clause (i) or (ii).

(4) The authorities first conferred by the Ex-
port 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 July 12, 1985.

(5) All cases involving violations of this chap-
ter shall be referred to the Secretary for pur-
poses of determining civil penalties and admin-
istrative sanctions under section 4610(c) of this
chapter, or to the Attorney General for criminal
action in accordance with this chapter.

(6) Notwithstanding any other provision of
law, the United States Customs Service may ex-
pand in the enforcement of export controls
under this chapter 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 July 12, 1985,
the Secretary, with the concurrence of the Sec-
retary of the Treasury, shall publish in the Fed-
eral Register procedures setting forth, in ac-
cordance with this subsection, the responsibil-
ities of the Department of Commerce and the
United States Customs Service in the enforce-
ment of this chapter. In addition, the Secretary,
with the concurrence of the Secretary of the
Treasury, may publish procedures for the shar-
ing of information in accordance with sub-
section (c)(5) of this section, and procedures for
the dissemination to the appropriate departments
and agencies by private persons of information
relating to the enforcement of this chapter.

(8) For purposes of this section, a reference to
the enforcement of this chapter or to a violation
of this chapter includes a reference to the en-
forcement or a violation of any regulation,
order, or license issued under this chapter.

(b) Immunity

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

(c) Confidentiality

(1) Except as otherwise provided by the third
sentence of section 4607(b)(2) of this title and by
section 4610(c)(2)(C) of this title, information ob-
tained under this chapter after June 30, 1980,
which is deemed confidential, including Ship-
ers' Export Declarations, or with reference
to which a request for confidential treatment is
made by the person furnishing such information,
title 26, may be disclosed only as authorized by such section. The Secretary and the Commissioner of U.S. Customs and Border Protection, 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 U.S. Customs and Border Protection 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 chapter, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this chapter 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 4604(b) of this title, shall review the regulations issued under this chapter and the commodity control list in order to determine how compliance with the provisions of this chapter can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

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

REFERENCES IN TEXT

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 confidential and from which any individual can be identified, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and personnel. Also added provisions that the agency which shall have obtained the information, and consistent with section 54 of title 31, be made available only by that agency.


CHANGE OF NAME

“Commissioner of U.S. Customs and Border Protection” substituted for “Commissioner of Customs” in subsec. (a)(1), (3)(A) and in two places in subsec. (c)(3) on authority of section 802(d)(2) of Pub. L. 114–125, set out as a note under section 211 of Title 6, Domestic Security.

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. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107–296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114–125, and section 802(b) of Pub. L. 114–125, set out as a note under section 211 of Title 6.

APPLICATION OF CERTAIN PROVISIONS OF EXPORT ADMINISTRATION ACT OF 1979


“(b) TERMINATION DATE.—Subsection (a) terminates at the end of the 4-year period beginning on the date of the enactment of this Act [Dec. 18, 2014].”

§ 4615. Administrative procedure and judicial review

(a) Exemption

Except as provided in section 4610(c)(2) of this title and subsection (c) of this section, the functions exercised under this chapter are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5.

(b) Public participation

It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this chapter be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this chapter 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 4607 of this title) is sought under section 4610 of this title, 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. 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 Appeals 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. Any person who, for at least 2 of the 10 years immediately preceding 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.