

Table of Contents

§ 756.1 SCOPE 1

§ 756.2 APPEAL FROM AN ADMINISTRATIVE ACTION 1

§ 756.3 JUDICIAL REVIEW OF AGENCY ACTION 3

§ 756.1 SCOPE

Section 756.2 describes the procedures applicable to appeals from administrative actions taken under the Export Administration Act (EAA) or the Export Administration Regulations (EAR). (In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C). Section 756.3 describes the procedures under which the Bureau of Industry and Security (BIS) can safeguard national security information when agency action is under judicial review.

§ 756.2 APPEAL FROM AN ADMINISTRATIVE ACTION

(a) Scope

Any person directly and adversely affected by an administrative action taken by BIS may appeal to the Under Secretary for reconsideration of that administrative action. The following types of administrative actions are not subject to the appeals procedures described in this part:

- (1) **Issuance, amendment, revocation, or appeal of a regulation.** (These requests may be submitted to BIS at any time.)
- (2) Denial or probation orders, civil penalties, sanctions, or other actions under parts 764 and 766 of the EAR, except that, any appeal from an action taken under § 766.25 and any appeal from an action taken in accordance with § 766.23 to make an action taken under § 766.25 applicable

to a related person shall be subject to the appeals procedures described in this part.

(3) A decision on a request to remove or modify an Entity List entry made pursuant to § 744.16 of the EAR, a decision on a request to remove or modify an Unverified List entry made pursuant to § 744.15 of the EAR, or a request to remove or modify a Military End User entry made pursuant to § 744.21(b) of the EAR.

(4) A decision on whether License Exception Strategic Trade Authorization (STA) is available for “600 series” “end items” pursuant to § 740.20(g) of the EAR.

(b) Review and appeal officials

The Under Secretary may delegate to the Deputy Under Secretary for Industry and Security or to another BIS official the authority to review and decide the appeal. In addition, the Under Secretary may designate any employee of the Department of Commerce to be an appeals coordinator to assist in the review and processing of an appeal under this part. If such employee is not an employee of BIS, such designation may be made only with the concurrence of the head of the operating unit in which that employee is employed. The responsibilities of an appeals coordinator may include presiding over informal hearings.

(c) Appeal procedures

(1) **Filing.** An appeal under this part must be received by the

Under Secretary for Industry and Security
 Bureau of Industry and Security
 U.S. Department of Commerce, Room 3898
 14th Street and Pennsylvania Avenue, N.W.
 Washington, DC 20230

not later than 45 days after the date appearing on the written notice of administrative action.

(2) Content of appeal. The appeal must include a full written statement in support of appellant's position. The appeal must include a precise statement of why the appellant believes the administrative action has a direct and adverse effect and should be reversed or modified. The Under Secretary may request additional information that would be helpful in resolving the appeal, and may accept additional submissions. The Under Secretary will not ordinarily accept any submission filed more than 30 days after the filing of the appeal or of any requested submission.

(3) Request for informal hearing. In addition to the written statement submitted in support of an appeal, an appellant may request, in writing, at the time an appeal is filed, an opportunity for an informal hearing. The Under Secretary may grant or deny a request for an informal hearing. Any hearings will be held in the District of Columbia unless the Under Secretary determines, based upon good cause shown, that another location would be better.

(4) Informal hearing procedures.

(i) Presentations. The Under Secretary shall provide an opportunity for the appellant to make an oral presentation based on the materials previously submitted by the appellant or made available by the Department in connection with the administrative action. The Under Secretary may require that any facts in controversy be covered by an affidavit or testimony given under oath or affirmation.

(ii) Evidence. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the Under Secretary to be relevant and material to the proceeding, and not unduly repetitious, will be received and considered.

(iii) Procedural questions. The Under Secretary has the authority to limit the number of people attending the hearing, to impose any time

or other limitations deemed reasonable, and to determine all procedural questions.

(iv) Transcript. A transcript of an informal hearing shall not be made, unless the Under Secretary determines that the national interest or other good cause warrants it, or the appellant requests a transcript. If the appellant requests a transcript, the appellant will be responsible for paying all expenses related to production of the transcript.

(v) Report. Any person designated by the Under Secretary to conduct an informal hearing shall submit a written report containing a summary of the hearing and recommend action to the Under Secretary.

(d) Decisions

(1) Determination of appeals. In addition to the documents specifically submitted in connection with the appeal, the Under Secretary shall consider any recommendations, reports, or relevant documents available to BIS in determining the appeal, but shall not be bound by any such recommendation, nor prevented from considering any other information, or consulting with any other person or groups, in making a determination. The Under Secretary may adopt any other procedures deemed necessary and reasonable for considering an appeal. The Under Secretary shall decide an appeal within a reasonable time after receipt of the appeal. The decision shall be issued to the appellant in writing and contain a statement of the reasons for the action.

(2) Effect of the determination. The decision of the Under Secretary shall be final.

(e) Effect of appeal

Acceptance and consideration of an appeal shall not affect any administrative action, pending or in effect, unless the Under Secretary, upon request

by the appellant and with opportunity for response, grants a stay.

§ 756.3 JUDICIAL REVIEW OF AGENCY ACTION

(a) Definition

For purposes of this section, the term *agency action* has the same meaning given such term in 5 U.S.C. 551(13), *i.e.*, includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

(b) Classified national security information

In any judicial review of any agency action under the EAR, if such action was based in whole or in part on classified national security information as defined in Executive Order 13526 (December 29, 2009), such information may be submitted to the reviewing court *ex parte* and *in camera*. This paragraph (b) does not confer or imply any right to review in any tribunal, judicial or otherwise.