

for the President to carry out this section, except that no such amount may be appropriated which, when added to amounts previously appropriated for such purpose but not yet obligated, would cause such amounts to exceed \$25,000,000.

(2) Availability of funds

Amounts appropriated pursuant to the authorization of appropriations in this subsection are authorized to remain available until expended.

(3) Designation of appropriations

Amounts appropriated pursuant to the authorization of appropriations in this subsection may be referred to as the “United States International Broadcasting Surge Capacity Fund”.

(c) Report

The annual report submitted to the President and Congress by the Broadcasting Board of Governors under section 6204(a)(9) of this title shall provide a detailed description of any activities carried out under this section.

(Pub. L. 103-236, title III, §316, as added Pub. L. 110-53, title XX, §2031(c), Aug. 3, 2007, 121 Stat. 516.)

FINDING; SENSE OF CONGRESS

Pub. L. 110-53, title XX, §2031(a), (b), Aug. 3, 2007, 121 Stat. 515, provided that:

“(a) FINDING.—Congress finds that the report of the National Commission on Terrorist Attacks Upon the United States stated that ‘Recognizing that Arab and Muslim audiences rely on satellite television and radio, the government has begun some promising initiatives in television and radio broadcasting to the Arab world, Iran, and Afghanistan. These efforts are beginning to reach large audiences. The Broadcasting Board of Governors has asked for much larger resources. It should get them.’.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) the United States needs to improve its communication of information and ideas to people in foreign countries, particularly in countries with significant Muslim populations; and

“(2) public diplomacy should reaffirm the paramount commitment of the United States to democratic principles, including preserving the civil liberties of all the people of the United States, including Muslim-Americans.”

CHAPTER 72—NUCLEAR PROLIFERATION PREVENTION

SUBCHAPTER I—SANCTIONS FOR NUCLEAR PROLIFERATION

Sec.	
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SUBCHAPTER I—SANCTIONS FOR NUCLEAR PROLIFERATION

§ 6301. Imposition of procurement sanction on persons engaging in export activities that contribute to proliferation

(a) Determination by President

(1) In general

Except as provided in subsection (b)(2) of this section, the President shall impose the sanction described in subsection (c) of this section if the President determines in writing that, on or after the effective date of this subchapter, a foreign person or a United States person has materially and with requisite knowledge contributed, through the export from the United States or any other country of any goods or technology (as defined in section 6305(2) of this title), to the efforts by any individual, group, or non-nuclear-weapon state to acquire unsafeguarded special nuclear material or to use, develop, produce, stockpile, or otherwise acquire any nuclear explosive device.

(2) Persons against which the sanction is to be imposed

The sanction shall be imposed pursuant to paragraph (1) on—

(A) the foreign person or United States person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person or United States person;

(C) any foreign person or United States person that is a parent or subsidiary of that person if that parent or subsidiary materially and with requisite knowledge assisted in the activities which were the basis of that determination; and

(D) any foreign person or United States person that is an affiliate of that person if that affiliate materially and with requisite knowledge assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that person.

(3) Other sanctions available

The sanction which is required to be imposed for activities described in this subsection is in addition to any other sanction which may be imposed for the same activities under any other provision of law.

(4) Definition

For purposes of this subsection, the term “requisite knowledge” means situations in which a person “knows”, as “knowing” is defined in section 78dd-2 of title 15.

(b) Consultation with and actions by foreign government of jurisdiction

(1) Consultations

If the President makes a determination described in subsection (a)(1) of this section with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with re-

spect to the imposition of the sanction pursuant to this section.

(2) Actions by government of jurisdiction

In order to pursue such consultations with that government, the President may delay imposition of the sanction pursuant to this section for up to 90 days. Following these consultations, the President shall impose the sanction unless the President determines and certifies in writing to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1) of this section. The President may delay the imposition of the sanction for up to an additional 90 days if the President determines and certifies in writing to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) Report to Congress

Not later than 90 days after making a determination under subsection (a)(1) of this section, the President shall submit to the Committee on Foreign Relations and the Committee on Governmental Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) Sanction

(1) Description of sanction

The sanction to be imposed pursuant to subsection (a)(1) of this section is, except as provided in paragraph (2) of this subsection, that the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(2) of this section.

(2) Exceptions

The President shall not be required to apply or maintain the sanction under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(ii) if the President determines in writing that the person or other entity to which the sanction would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines in writing that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on

which the President publishes his intention to impose the sanction;

(C) to—

(i) spare parts which are essential to United States products or production;

(ii) component parts, but not finished products, essential to United States products or production; or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) Advisory opinions

Upon the request of any person, the Secretary of State may, in consultation with the Secretary of Defense, issue in writing an advisory opinion to that person as to whether a proposed activity by that person would subject that person to the sanction under this section. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanction, and any person who thereafter engages in such activity, may not be made subject to such sanction on account of such activity.

(e) Termination of sanction

The sanction imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of the sanction and shall cease to apply thereafter only if the President determines and certifies in writing to the Congress that—

(1) reliable information indicates that the foreign person or United States person with respect to which the determination was made under subsection (a)(1) of this section has ceased to aid or abet any individual, group, or non-nuclear-weapon state in its efforts to acquire unsafeguarded special nuclear material or any nuclear explosive device, as described in that subsection; and

(2) the President has received reliable assurances from the foreign person or United States person, as the case may be, that such person will not, in the future, aid or abet any individual, group, or non-nuclear-weapon state in its efforts to acquire unsafeguarded special nuclear material or any nuclear explosive device, as described in subsection (a)(1) of this section.

(f) Waiver

(1) Criterion for waiver

The President may waive the application of the 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 in writing to the Congress that the continued imposition of the sanction would have a serious adverse effect on vital United States interests.

(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.

(Pub. L. 103-236, title VIII, §821, Apr. 30, 1994, 108 Stat. 508.)

REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsec. (a)(1), as 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103-236, set out as an Effective Date note below.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

EFFECTIVE DATE

Pub. L. 103-236, title VIII, §831, Apr. 30, 1994, 108 Stat. 522, provided that: "The provisions of this part [part B (§§821-831) of title VIII of Pub. L. 103-236, enacting this subchapter and sections 2799aa to 2799aa-2 of this title, amending sections 262d, 2295a, 2295b, 2375, 2429a-1, 2593a, 2708, 2753, and 2780 of this title, section 635 of Title 12, Banks and Banking, and section 2160c of Title 42, The Public Health and Welfare, repealing sections 2429 and 2429a of this title, and enacting provisions set out as a note under section 2799aa of this title], and the amendments made by this part, shall take effect 60 days after the date of the enactment of this Act [Apr. 30, 1994]."

SHORT TITLE

Pub. L. 103-236, title VIII, §801, Apr. 30, 1994, 108 Stat. 507, provided that: "This title [enacting this chapter and sections 2799aa to 2799aa-2 of this title, amending sections 262d, 2295a, 2295b, 2375, 2429a-1, 2593a, 2708, 2753, 2780, and 3281 of this title, section 635 of Title 12, Banks and Banking, and section 2160c of Title 42, The Public Health and Welfare, repealing sections 2429 and 2429a of this title, and enacting provisions set out as notes under this section and section 2799aa of this title] may be cited as the 'Nuclear Proliferation Prevention Act of 1994'."

TERMINATION UPON ENACTMENT OF NEXT FOREIGN RELATIONS ACT

Pub. L. 103-236, title VIII, §851, Apr. 30, 1994, 108 Stat. 525, which provided that on date of enactment of first Foreign Relations Authorization Act that was enacted after enactment of Pub. L. 103-236, the provisions of parts A (amending section 3281 of this title) and B (see Effective Date note above) of title VIII of Pub. L. 103-236 were to cease to be effective, the amendments made by those parts were to be repealed, and any provision of law repealed by those parts was to be reenacted, was itself repealed by Pub. L. 104-164, title I, §157(a), July 21, 1996, 110 Stat. 1440.

ASSIGNMENT OF CERTAIN FUNCTIONS RELATING TO PROCUREMENT SANCTIONS ON PERSONS ENGAGING IN EXPORT ACTIVITIES THAT CONTRIBUTE TO PROLIFERATION

Memorandum of President of the United States, Mar. 5, 2007, 72 F.R. 11283, provided:

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[,] the Secretary of Commerce[, and] the Director of National Intelligence

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, the functions of the President under section 821 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (22

U.S.C. 6301) are assigned to the Secretary of State, except that the function of the President under section 821(c)(2)(A) is assigned to the Secretary of Defense.

In the performance of their respective functions under this memorandum, the Secretaries of State and Defense shall, as appropriate, consult each other, the Secretaries of the Treasury and Commerce, and the heads of other departments and agencies.

The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 6302. Role of international financial institutions

The Secretary of the Treasury shall instruct the United States executive director to each of the international financial institutions described in section 262d(a) of this title to use the voice and vote of the United States to oppose any use of the institution's funds to promote the acquisition of unsafeguarded special nuclear material or the development, stockpiling, or use of any nuclear explosive device by any non-nuclear-weapon state.

(Pub. L. 103-236, title VIII, §823(a), Apr. 30, 1994, 108 Stat. 512.)

§ 6303. Prohibition on assisting nuclear proliferation through provision of financing

(a) "Prohibited activity" defined

For purposes of this section, the term "prohibited activity" means the act of knowingly, materially, and directly contributing or attempting to contribute, through the provision of financing, to—

(1) the acquisition of unsafeguarded special nuclear material; or

(2) the use, development, production, stockpiling, or other acquisition of any nuclear explosive device,

by any individual, group, or non-nuclear-weapon state.

(b) Prohibition

To the extent that the United States has jurisdiction to prohibit such activity by such person, no United States person and no foreign person may engage in any prohibited activity.

(c) Presidential determination and order with respect to United States and foreign persons

If the President determines,¹ that a United States person or a foreign person has engaged in a prohibited activity (without regard to whether subsection (b) of this section applies), the President shall, by order, impose the sanctions described in subsection (d) of this section on such person.

(d) Sanctions

The following sanctions shall be imposed pursuant to any order issued under subsection (c) of this section with respect to any United States person or any foreign person:

(1) Ban on dealings in Government finance

(A) Designation as primary dealer

Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit

¹ So in original.

the continuation of any prior designation of, the person as a primary dealer in United States Government debt instruments.

(B) Service as depository

The person may not serve as a depository for United States Government funds.

(2) Restrictions on operations

The person may not, directly or indirectly—

(A) commence any line of business in the United States in which the person was not engaged as of the date of the order; or

(B) conduct business from any location in the United States at which the person did not conduct business as of the date of the order.

(e) Consultation with and actions by foreign government of jurisdiction

(1) Consultations

If the President makes a determination under subsection (c) of this section with respect to a foreign person, the Congress urges the President to initiate consultations immediately with any appropriate foreign government with respect to the imposition of any sanction pursuant to this section.

(2) Actions by government of jurisdiction

(A) Suspension of period for imposing sanctions

In order to pursue consultations described in paragraph (1) with any government referred to in such paragraph, the President may delay, for up to 90 days, the effective date of an order under subsection (c) of this section imposing any sanction.

(B) Coordination with activities of foreign government

Following consultations described in paragraph (1), the order issued by the President under subsection (c) of this section imposing any sanction on a foreign person shall take effect unless the President determines, and certifies in writing to the Congress, that the government referred to in paragraph (1) has taken specific and effective actions, including the imposition of appropriate penalties, to terminate the involvement of the foreign person in any prohibited activity.

(C) Extension of period

After the end of the period described in subparagraph (A), the President may delay, for up to an additional 90 days, the effective date of an order issued under subsection (b) of this section imposing any sanction on a foreign person if the President determines, and certifies in writing to the Congress, that the appropriate foreign government is in the process of taking actions described in subparagraph (B).

(3) Report to Congress

Before the end of the 90-day period beginning on the date on which an order is issued under subsection (c) of this section, the President shall submit to the Congress a report on—

(A) the status of consultations under this subsection with the government referred to in paragraph (1); and

(B) the basis for any determination under paragraph (2) that such government has taken specific corrective actions.

(f) Termination of sanctions

Any sanction imposed on any person pursuant to an order issued under subsection (c) of this section shall—

(1) remain in effect for a period of not less than 12 months; and

(2) cease to apply after the end of such 12-month period only if the President determines, and certifies in writing to the Congress, that—

(A) the person has ceased to engage in any prohibited activity; and

(B) the President has received reliable assurances from such person that the person will not, in the future, engage in any prohibited activity.

(g) Waiver

The President may waive the continued application of any sanction imposed on any person pursuant to an order issued under subsection (c) of this section if the President determines, and certifies in writing to the Congress, that the continued imposition of the sanction would have a serious adverse effect on the safety and soundness of the domestic or international financial system or on domestic or international payments systems.

(h) Enforcement action

The Attorney General may bring an action in an appropriate district court of the United States for injunctive and other appropriate relief with respect to—

(1) any violation of subsection (b) of this section; or

(2) any order issued pursuant to subsection (c) of this section.

(i) “Knowingly” defined

(1) In general

For purposes of this section, the term “knowingly” means the state of mind of a person with respect to conduct, a circumstance, or a result in which—

(A) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(B) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(2) Knowledge of the existence of a particular circumstance

If knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(j) Scope of application

This section shall apply with respect to prohibited activities which occur on or after the date this subchapter takes effect.

(Pub. L. 103-236, title VIII, §824, Apr. 30, 1994, 108 Stat. 512; Pub. L. 104-164, title I, §157(b), July 21, 1996, 110 Stat. 1440.)

REFERENCES IN TEXT

For the date this subchapter takes effect, referred to in subsec. (j), as 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103-236, set out as an Effective Date note under section 6301 of this title.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-164, §157(b)(1), struck out “in writing after opportunity for a hearing on the record” after “If the President determines.”

Subsec. (e). Pub. L. 104-164, §157(b)(2), (3), redesignated subsec. (f) as (e) and struck out heading and text of former subsec. (e). Text read as follows: “Any determination of the President under subsection (c) of this section shall be subject to judicial review in accordance with chapter 7 of part I of title 5.”

Subsecs. (f) to (k). Pub. L. 104-164, §157(b)(3), redesignated subsecs. (g) to (k) as (f) to (j), respectively. Former subsec. (f) redesignated (e).

§ 6304. Reporting on demarches

(1) It is the sense of the Congress that the Department of State should, in the course of implementing its reporting responsibilities under section 3282(c) of this title, include a summary of demarches that the United States has issued or received from foreign governments with respect to activities which are of significance from the proliferation standpoint.

(2) For purposes of this section, the term “demarche” means any official communication by one government to another, by written or oral means, intended by the originating government to express—

(A) a concern over a past, present, or possible future action or activity of the recipient government, or of a person within the jurisdiction of that government, contributing to the global spread of unsafeguarded special nuclear material or of nuclear explosive devices;

(B) a request for the recipient government to counter such action or activity; or

(C) both the concern and request described in subparagraphs (A) and (B).

(Pub. L. 103-236, title VIII, §828(b), Apr. 30, 1994, 108 Stat. 520.)

§ 6305. Definitions

For purposes of this subchapter—

(1) the term “foreign person” means—

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

(B) a corporation, partnership, or other nongovernment 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;

(2) the term “goods or technology” means—

(A) nuclear materials and equipment and sensitive nuclear technology (as such terms are defined in section 3203 of this title), all export items designated by the President pursuant to section 2139a(c) of title 42, and all technical assistance requiring authorization under section 2077(b) of title 42, and

(B) in the case of exports from a country other than the United States, any goods or technology that, if exported from the United States, would be goods or technology described in subparagraph (A);

(3) the term “IAEA safeguards” means the safeguards set forth in an agreement between a country and the International Atomic Energy Agency, as authorized by Article III(A)(5) of the Statute of the International Atomic Energy Agency;

(4) the term “nuclear explosive device” means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT);

(5) the term “non-nuclear-weapon state” means any country which is not a nuclear-weapon state, as defined by Article IX (3) of the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, London, and Moscow on July 1, 1968;

(6) the term “special nuclear material” has the meaning given that term in section 2014(aa) of title 42;

(7) the term “United States person” means—

(A) an individual who is a citizen of the United States or an alien admitted for permanent residence to the United States; or

(B) a corporation, partnership, or other nongovernment entity which is not a foreign person; and

(8) the term “unsafeguarded special nuclear material” means special nuclear material which is held in violation of IAEA safeguards or not subject to IAEA safeguards (excluding any quantity of material that could, if it were exported from the United States, be exported under a general license issued by the Nuclear Regulatory Commission).

(Pub. L. 103-236, title VIII, §830, Apr. 30, 1994, 108 Stat. 521.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original a reference to this part, meaning part B of title VIII of Pub. L. 103-236, which is classified principally to this subchapter. For complete classification of part B to the Code, see Effective Date note set out under section 6301 of this title and Tables.

SUBCHAPTER II—INTERNATIONAL ATOMIC ENERGY AGENCY

§ 6321. Bilateral and multilateral initiatives

It is the sense of the Congress that in order to maintain and enhance international confidence in the effectiveness of IAEA safeguards and in other multilateral undertakings to halt the global proliferation of nuclear weapons, the United States should seek to negotiate with other nations and groups of nations, including the IAEA Board of Governors and the Nuclear Suppliers Group, to—

(1) build international support for the principle that nuclear supply relationships must require purchasing nations to agree to full-scope international safeguards;

(2) encourage each nuclear-weapon state within the meaning of the Treaty to undertake a comprehensive review of its own procedures for declassifying information relating to the design or production of nuclear explosive