

sale, purchase, exchange, transport, receipt, or offer to sell, purchase, or exchange, including in interstate or foreign commerce, by—

- (i) subsections (b) and (c) of section 470ee of title 16; or
- (ii) any other Federal law or treaty.

(6) Item Requiring Export Certification

(A) In general

The term “Item Requiring Export Certification” means—

- (i) a cultural item; and
- (ii) an archaeological resource.

(B) Exclusion

The term “Item Requiring Export Certification” does not include an item described in clause (i) or (ii) of subparagraph (A) for which an Indian Tribe or Native Hawaiian organization with a cultural affiliation with the item has provided a certificate authorizing exportation of the item.

(7) Native American

The term “Native American” means—

- (A) Native American (as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)); and
- (B) Native Hawaiian (as so defined).

(8) Native Hawaiian organization

The term “Native Hawaiian organization” has the meaning given the term in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).

(9) Secretary

The term “Secretary” means the Secretary of the Interior.

(10) Tangible cultural heritage

The term “tangible cultural heritage” means—

- (A) Native American human remains; or
- (B) culturally, historically, or archaeologically significant objects, resources, patrimony, or other items that are affiliated with a Native American culture.

(Pub. L. 117–258, § 3, Dec. 21, 2022, 136 Stat. 2373.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 117–258, Dec. 21, 2022, 136 Stat. 2372, known as the Safeguard Tribal Objects of Patrimony Act of 2021, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3071 of this title and Tables.

The Native American Graves Protection and Repatriation Act, referred to in par. (5)(A)(i), is Pub. L. 101–601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

§ 3073. Export prohibitions; export certification system; international agreements

(a) Export prohibitions

(1) In general

It shall be unlawful for any person—

(A) to export, attempt to export, or otherwise transport from the United States any Item Prohibited from Exportation;

(B) to conspire with any person to engage in an activity described in subparagraph (A); or

(C) to conceal an activity described in subparagraph (A).

(2) Penalties

Any person who violates paragraph (1) and knows, or in the exercise of due care should have known, that the Item Prohibited from Exportation was taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any Federal law or treaty, shall be fined in accordance with section 3571 of title 18, imprisoned for not more than 1 year and 1 day for a first violation, and not more than 10 years for a second or subsequent violation, or both.

(3) Detention, forfeiture, and repatriation

(A) Detention and delivery

The Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, shall—

- (i) detain any Item Prohibited from Exportation that is exported, attempted to be exported, or otherwise transported from the United States in violation of paragraph (1); and
- (ii) deliver the Item Prohibited from Exportation to the Secretary.

(B) Forfeiture

Any Item Prohibited from Exportation that is exported, attempted to be exported, or otherwise transported from the United States in violation of paragraph (1) shall be subject to forfeiture to the United States in accordance with chapter 46 of title 18 (including section 983(c) of that chapter).

(C) Repatriation

Any Item Prohibited from Exportation that is forfeited under subparagraph (B) shall be expeditiously repatriated to the appropriate Indian Tribe or Native Hawaiian organization in accordance with, as applicable—

- (i) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) (including section 1170 of title 18, as added by that Act); or
- (ii) the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.).

(b) Export certification system

(1) Export certification requirement

(A) In general

No Item Requiring Export Certification may be exported from the United States without first having obtained an export certification in accordance with this subsection.

(B) Publication

The Secretary, in consultation with Indian Tribes and Native Hawaiian organizations, shall publish in the Federal Register a notice that includes—

(i) a description of characteristics typical of Items Requiring Export Certification, which shall—

(I) include the definitions of the terms—

(aa) “cultural items” in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001); and

(bb) “archaeological resource” in section 3 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb);

(II) describe the provenance requirements associated with the trafficking prohibition applicable to—

(aa) cultural items under section 1170(b) of title 18; and

(bb) archaeological resources under subsections (b) and (c) of section 6 of Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ee);

(III)(aa) include the definitions of the terms “Native American” and “Native Hawaiian” in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001); and

(bb) describe how those terms apply to archaeological resources under this chapter; and

(IV) be sufficiently specific and precise to ensure that—

(aa) an export certification is required only for Items Requiring Export Certification; and

(bb) fair notice is given to exporters and other persons regarding which items require an export certification under this subsection; and

(ii) a description of characteristics typical of items that do not qualify as Items Requiring Export Certification and therefore do not require an export certification under this subsection, which shall clarify that—

(I) an item made solely for commercial purposes is presumed to not qualify as an Item Requiring Export Certification, unless an Indian Tribe or Native Hawaiian organization challenges that presumption; and

(II) in some circumstances, receipts or certifications issued by Indian Tribes or Native Hawaiian organizations with a cultural affiliation with an item may be used as evidence to demonstrate a particular item does not qualify as an Item Requiring Export Certification.

(2) Eligibility for export certification

An Item Requiring Export Certification is eligible for an export certification under this subsection if—

(A) the Item Requiring Export Certification is not under ongoing Federal investigation;

(B) the export of the Item Requiring Export Certification would not otherwise violate any other provision of law; and

(C) the Item Requiring Export Certification—

(i) is not an Item Prohibited from Exportation;

(ii) was excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470cc) and in compliance with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)), if the permit for excavation or removal authorizes export; or

(iii) is accompanied by written confirmation from the Indian Tribe or Native Hawaiian organization with authority to alienate the Item Requiring Export Certification that—

(I) the exporter has a right of possession (as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)) of the Item Requiring Export Certification; or

(II) the Indian Tribe or Native Hawaiian organization has relinquished title or control of the Item Requiring Export Certification in accordance with section 3 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002).

(3) Export certification application and issuance procedures

(A) Applications for export certification

(i) In general

An exporter seeking to export an Item Requiring Export Certification from the United States shall submit to the Secretary an export certification application in accordance with clause (iii).

(ii) Consequences of false statement

Any willful or knowing false statement made on an export certification application form under clause (i) shall—

(I) subject the exporter to criminal penalties pursuant to section 1001 of title 18; and

(II) prohibit the exporter from receiving an export certification for any Item Requiring Export Certification in the future unless the exporter submits additional evidence in accordance with subparagraph (B)(iii)(I).

(iii) Form of export certification application

The Secretary, in consultation with Indian Tribes and Native Hawaiian organizations, and at the discretion of the Secretary, in consultation with third parties with relevant expertise, including institutions of higher education, museums, dealers, and collector organizations, shall develop an export certification application form, which shall require that an applicant—

(I) describe, and provide pictures of, each Item Requiring Export Certification that the applicant seeks to export;

(II) include all available information regarding the provenance of each such Item Requiring Export Certification; and

(III) include the attestation described in subparagraph (B)(i).

(B) Evidence

(i) In general

In completing an export certification application with respect to an Item Requiring Export Certification that the exporter seeks to export, the exporter shall attest that, to the best of the knowledge and belief of the exporter, the exporter is not attempting to export an Item Prohibited from Exportation.

(ii) Sufficiency of attestation

An attestation under clause (i) shall be considered to be sufficient evidence to support the application of the exporter under subparagraph (A)(iii)(III), on the condition that the exporter is not required to provide additional evidence under clause (iii)(I).

(iii) Additional requirements

(I) In general

The Secretary shall give notice to an exporter that submits an export certification application under subparagraph (A)(i) that the exporter is required to submit additional evidence in accordance with subclause (III) if the Secretary has determined under subparagraph (A)(ii) that the exporter made a willful or knowing false statement on the application or any past export certification application.

(II) Delays or denials

The Secretary shall give notice to an exporter that submits an export certification application under subparagraph (A)(i) that the exporter may submit additional evidence in accordance with subclause (III) if the issuance of an export certification is—

(aa) delayed pursuant to the examination by the Secretary of the eligibility of the Item Requiring Export Certification for an export certification; or

(bb) denied by the Secretary because the Secretary determined that the Item Requiring Export Certification is not eligible for an export certification under this subsection.

(III) Additional evidence

On receipt of notice under subclause (I), an exporter shall, or on receipt of a notice under subclause (II), an exporter may, provide the Secretary with such additional evidence as the Secretary may require to establish that the Item Requiring Export Certification is eligible for an export certification under this subsection.

(C) Database applications

(i) In general

The Secretary shall establish and maintain a secure central Federal database information system (referred to in this sub-

paragraph as the “database”) for the purpose of making export certification applications available to Indian Tribes and Native Hawaiian organizations.

(ii) Collaboration required

The Secretary shall collaborate with Indian Tribes, Native Hawaiian organizations, and the interagency working group convened under section 3075(a) of this title in the design and implementation of the database.

(iii) Availability

Immediately on receipt of an export certification application, the Secretary shall make the export certification application available on the database.

(iv) Deletion from database

On request by an Indian Tribe or Native Hawaiian organization, the Secretary shall delete an export certification application from the database.

(v) Technical assistance

If an Indian Tribe or Native Hawaiian organization lacks sufficient resources to access the database or respond to agency communications in a timely manner, the Secretary, in consultation with Indian Tribes and Native Hawaiian organizations, shall provide technical assistance to facilitate that access or response, as applicable.

(D) Issuance of export certification

(i) On receipt of an export certification application for an Item Requiring Export Certification that meets the requirements of subparagraphs (A) and (B), if the Secretary, in consultation with Indian Tribes and Native Hawaiian organizations with a cultural affiliation with the Item Requiring Export Certification, determines that the Item Requiring Export Certification is eligible for an export certification under paragraph (2), the Secretary may issue an export certification for the Item Requiring Export Certification.

(ii) On receipt of an export certification application for an Item Requiring Export Certification that meets the requirements of subparagraphs (A) and (B)—

(I) the Secretary shall have 1 business day to notify the relevant Indian Tribes and Native Hawaiian Organizations of an application for export of an Item Requiring Export Certification;

(II) Indian Tribes and Native Hawaiian organizations shall have 9 business days to review the export certification application;

(III) if an Indian Tribe or Native Hawaiian organization notifies the Secretary that the Item Requiring Export Certification may not be eligible for an export certification under paragraph (2), the Secretary shall have 7 business days to review the application;

(IV) if no Indian Tribe or Native Hawaiian organization so notifies the Secretary, the Secretary shall have 1 business day to review the application;

(V) with notice to the exporter, the Secretary may extend the review of an application for up to 30 business days if credible evidence is provided that the Item Requiring Export Certification may not be eligible for an export certification under paragraph (2); and

(VI) the Secretary shall make a determination to approve or deny the export certification application within the time allotted.

(E) Revocation of export certification

(i) In general

If credible evidence is provided that indicates that an item that received an export certification under subparagraph (D) is not eligible for an export certification under paragraph (2), the Secretary may immediately revoke the export certification.

(ii) Determination

In determining whether a revocation is warranted under clause (i), the Secretary shall consult with Indian Tribes and Native Hawaiian organizations with a cultural affiliation with the affected Item Requiring Export Certification.

(4) Detention, forfeiture, repatriation, and return

(A) Detention and delivery

The Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, shall—

(i) detain any Item Requiring Export Certification that an exporter attempts to export or otherwise transport without an export certification; and

(ii) deliver the Item Requiring Export Certification to the Secretary, for seizure by the Secretary.

(B) Forfeiture

Any Item Requiring Export Certification that is detained under subparagraph (A)(i) shall be subject to forfeiture to the United States in accordance with chapter 46 of title 18 (including section 983(c) of that chapter).

(C) Repatriation or return to exporter

(i) In general

Not later than 60 days after the date of delivery to the Secretary of an Item Requiring Export Certification under subparagraph (A)(ii), the Secretary shall determine whether the Item Requiring Export Certification is an Item Prohibited from Exportation.

(ii) Repatriation

If an Item Requiring Export Certification is determined by the Secretary to be an Item Prohibited from Exportation and is forfeited under subparagraph (B), the item shall be expeditiously repatriated to the appropriate Indian Tribe or Native Hawaiian organization in accordance with, as applicable—

(I) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) (including section 1170 of title 18, as added by that Act); or

(II) the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.).

(iii) Return to exporter

(I) In general

If the Secretary determines that credible evidence does not establish that the Item Requiring Export Certification is an Item Prohibited from Exportation, or if the Secretary does not complete the determination by the deadline described in clause (i), the Secretary shall return the Item Requiring Export Certification to the exporter.

(II) Effect

The return of an Item Requiring Export Certification to an exporter under subclause (I) shall not mean that the Item Requiring Export Certification is eligible for an export certification under this subsection.

(5) Penalties

(A) Items requiring export certification

(i) In general

It shall be unlawful for any person to export, attempt to export, or otherwise transport from the United States any Item Requiring Export Certification without first obtaining an export certification.

(ii) Penalties

Except as provided in subparagraph (D), any person who violates clause (i) shall be—

(I) assessed a civil penalty in accordance with such regulations as the Secretary promulgates pursuant to section 3078 of this title; and

(II) subject to any other applicable penalties under this chapter.

(B) Items prohibited from exportation

Whoever exports an Item Prohibited from Exportation without first securing an export certification shall be liable for a civil money penalty, the amount of which shall equal the total cost of storing and repatriating the Item Prohibited from Exportation.

(C) Use of fines collected

Any amounts collected by the Secretary as a civil penalty under subparagraph (A)(ii)(I) or (B) shall be credited to the currently applicable appropriation, account, or fund of the Department of the Interior as discretionary offsetting collections and shall be available only to the extent and in the amounts provided in advance in appropriations Acts—

(i) to process export certification applications under this subsection; and

(ii) to store and repatriate the Item Prohibited from Exportation.

(D) Voluntary return

(i) In general

Any person who attempts to export or otherwise transport from the United States an Item Requiring Export Certifi-

cation without first obtaining an export certification, but voluntarily returns the Item Requiring Export Certification, or directs the Item Requiring Export Certification to be returned, to the appropriate Indian Tribe or Native Hawaiian organization in accordance with section 3074 of this title prior to the commencement of an active Federal investigation shall not be prosecuted for a violation of subparagraph (A) with respect to the Item Requiring Export Certification.

(ii) Actions not commencing a Federal investigation

For purposes of clause (i), the following actions shall not be considered to be actions that commence an active Federal investigation:

(I) The submission by the exporter of an export certification application for the Item Requiring Export Certification under paragraph (3)(A)(i).

(II) The detention of the Item Requiring Export Certification by the Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, under paragraph (4)(A)(i).

(III) The delivery to the Secretary of the Item Requiring Export Certification by the Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, under paragraph (4)(A)(ii).

(IV) The seizure by the Secretary of the Item Requiring Export Certification under paragraph (4)(A)(ii).

(6) Fees

(A) In general

The Secretary may assess reasonable fees to process export certification applications under this subsection, subject to subparagraph (B).

(B) Availability of amounts collected

Fees authorized under subparagraph (A) shall be collected and available only to the extent and in the amounts provided in advance in appropriations Acts.

(7) Administrative appeal

If the Secretary denies an export certification or an Item Requiring Export Certification is detained under this subsection, the exporter, on request, shall be given a hearing on the record in accordance with such rules and regulations as the Secretary promulgates pursuant to section 3078 of this title.

(8) Training

(A) In general

The Secretary, the Secretary of State, the Attorney General, and the heads of all other relevant Federal agencies shall require all appropriate personnel to participate in training regarding applicable laws and consultations to facilitate positive government-to-government interactions with Indian Tribes and Native Hawaiian Organizations.

(B) U.S. Customs and Border Protection training

The Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, shall require all appropriate personnel of U.S. Customs and Border Protection to participate in training provided by the Secretary of the Interior or an Indian Tribe or Native Hawaiian organization to assist the personnel in identifying, handling, and documenting in a culturally sensitive manner Items Requiring Export Certification for purposes of this chapter.

(C) Consultation

In developing or modifying and delivering trainings under subparagraphs (A) and (B), the applicable heads of Federal agencies shall consult with Indian Tribes and Native Hawaiian organizations.

(c) Agreements to request return from foreign countries

The President may request from foreign nations agreements that specify concrete measures that the foreign nation will carry out—

(1) to discourage commerce in, and collection of, Items Prohibited from Exportation;

(2) to encourage the voluntary return of tangible cultural heritage; and

(3) to expand the market for the products of Indian art and craftsmanship in accordance with section 305a of this title.

(Pub. L. 117–258, § 5, Dec. 21, 2022, 136 Stat. 2374.)

Editorial Notes

REFERENCES IN TEXT

The Native American Graves Protection and Repatriation Act, referred to in subsecs. (a)(3)(C)(i) and (b)(4)(C)(ii)(I), is Pub. L. 101–601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Archaeological Resources Protection Act of 1979, referred to in subsecs. (a)(3)(C)(ii) and (b)(4)(C)(ii)(II), is Pub. L. 96–95, Oct. 31, 1979, 93 Stat. 721, which is classified generally to chapter 1B (§470aa et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 470aa of Title 16 and Tables.

This chapter, referred to in subsec. (b)(1)(B)(i)(III)(bb), (5)(A)(ii)(II), (8)(B), was in the original “this Act”, meaning Pub. L. 117–258, Dec. 21, 2022, 136 Stat. 2372, known as the Safeguard Tribal Objects of Patrimony Act of 2021, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3071 of this title and Tables.

§ 3074. Voluntary return of tangible cultural heritage

(a) Liaison

The Secretary and the Secretary of State shall each designate a liaison to facilitate the voluntary return of tangible cultural heritage.

(b) Trainings and workshops

The liaisons designated under subsection (a) shall offer to representatives of Indian Tribes and Native Hawaiian organizations and collec-