

(Pub. L. 115-232, div. A, title XVII, §1759, Aug. 13, 2018, 132 Stat. 2223; Pub. L. 116-283, div. A, title X, §1081(d)(8), Jan. 1, 2021, 134 Stat. 3874.)

### Editorial Notes

#### AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116-283 substituted period for semicolon at end.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116-283, div. A, title X, §1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(8) is effective as of Aug. 13, 2018, and as if included in Pub. L. 115-232.

## § 4819. Penalties

### (a) Unlawful acts

#### (1) In general

It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of this subchapter or of any regulation, order, license, or other authorization issued under this subchapter, including any of the unlawful acts described in paragraph (2).

#### (2) Specific unlawful acts

The unlawful acts described in this paragraph are the following:

(A) No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(B) No person may cause or aid, abet, counsel, command, induce, procure, permit, or approve the doing of any act prohibited, or the omission of any act required by this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(C) No person may solicit or attempt a violation of this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(D) No person may conspire or act in concert with one or more other persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder.

(E) No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, or conduct negotiations to facilitate such activities for, any item exported or to be exported from the United States, or that is otherwise subject to the Export Administration Regulations, with knowledge that a violation of this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item unless valid authorization is obtained therefor.

(F) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to the Department of Commerce, or an official of any other United States agency, including the Department of Homeland Security and the Department of Justice, or indirectly through any other person—

(i) in the course of an investigation or other action subject to the Export Administration Regulations;

(ii) in connection with the preparation, submission, issuance, use, or maintenance of any export control document or any report filed or required to be filed pursuant to the Export Administration Regulations; or

(iii) for the purpose of or in connection with effecting any export, reexport, or in-country transfer of an item subject to the Export Administration Regulations or a service or other activity of a United States person described in section 4813 of this title.

(G) No person may engage in any transaction or take any other action with intent to evade the provisions of this subchapter, the Export Administration Regulations, or any order, license, or authorization issued thereunder.

(H) No person may fail or refuse to comply with any reporting or recordkeeping requirements of the Export Administration Regulations or of any order, license, or authorization issued thereunder.

(I) Except as specifically authorized in the Export Administration Regulations or in writing by the Department of Commerce, no person may alter any license, authorization, export control document, or order issued under the Export Administration Regulations.

(J) No person may take any action that is prohibited by a denial order or a temporary denial order issued by the Department of Commerce to prevent imminent violations of this subchapter, the Export Administration Regulations, or any order, license or authorization issued thereunder.

### (3) Additional requirements

For purposes of paragraph (2)(F), any representation, statement, or certification made by any person shall be deemed to be continuing in effect. Each person who has made a representation, statement, or certification to the Department of Commerce relating to any order, license, or other authorization issued under this subchapter shall notify the Department of Commerce, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention had occurred or may occur in the future.

### (b) Criminal penalty

A person who willfully commits, willfully attempts to commit, or willfully conspires to com-

mit, or aids and abets in the commission of, an unlawful act described in subsection (a)—

(1) shall be fined not more than \$1,000,000; and

(2) in the case of the individual, shall be imprisoned for not more than 20 years, or both.

**(c) Civil penalties**

**(1) Authority**

The Secretary may impose the following civil penalties on a person for each violation by that person of this subchapter or any regulation, order, or license issued under this subchapter, for each violation:

(A) A fine of not more than \$300,000 or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

(B) Revocation of a license issued under this subchapter to the person.

(C) A prohibition on the person's ability to export, reexport, or in-country transfer any items controlled under this subchapter.

**(2) Procedures**

Any civil penalty under this subsection may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5.

**(3) Standards for levels of civil penalty**

The Secretary may by regulation provide standards for establishing levels of civil penalty under this subsection based upon factors such as the seriousness of the violation, the culpability of the violator, and such mitigating factors as the violator's record of cooperation with the Government in disclosing the violation.

**(d) Criminal forfeiture**

**(1) In general**

Any person who is convicted under subsection (b) of a violation of a control imposed under section 4812 of this title (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States any of the person's property—

(A) used or intended to be used, in any manner, to commit or facilitate the violation;

(B) constituting or traceable to the gross proceeds taken, obtained, or retained, in connection with or as a result of the violation; or

(C) constituting an item or technology that is exported or intended to be exported in violation of this subchapter.<sup>1</sup>

**(2) Procedures**

The procedures in any forfeiture under this subsection shall be governed by the procedures established under section 853 of title 21, other than subsection (d) of such section.

**(e) Prior convictions**

**(1) License bar**

**(A) In general**

The Secretary may—

(i) deny the eligibility of any person convicted of a criminal violation described in subparagraph (B) to export, reexport, or in-country transfer outside the United States any item, whether or not subject to controls under this subchapter, for a period of up to 10 years beginning on the date of the conviction; and

(ii) revoke any license or other authorization to export, reexport, or in-country transfer items that was issued under this subchapter and in which such person has an interest at the time of the conviction.

**(B) Violations**

The violations referred to in subparagraph (A) are any criminal violations of, or criminal attempt or conspiracy to violate—

(i) this subchapter (or any regulation, license, or order issued under this subchapter);

(ii) any regulation, license, or order issued under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.];

(iii) section 371, 554, 793, 794, or 798 of title 18;

(iv) section 1001 of title 18;

(v) section 783(b) of this title; or

(vi) section 2778 of title 22.

**(2) Application to other parties**

The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or business, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in subsection (c)(2).

**(f) Other authorities**

Nothing in subsection (c), (d), or (e) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this subchapter, or any regulation, order, license or other authorization issued under this subchapter;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this subchapter, or any regulation, order, license, or other authorization issued under this subchapter; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 401(b) of title 22.

(Pub. L. 115-232, div. A, title XVII, §1760, Aug. 13, 2018, 132 Stat. 2223.)

**Editorial Notes**

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (c)(1), (e)(1), and (f)(1), (2), was in the original "this part", meaning part I (§§1751-1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, known as the Export Controls Act of 2018, which is classified principally to this subchapter. For complete classification of part I to the Code, see section 1751 of Pub. L. 115-232, set out as a Short Title note under section 4801 of this title and Tables.

<sup>1</sup> See References in Text note below.

This subchapter, referred to in subsec. (d)(1)(C), was in the original “this title”, and was translated as meaning part I (§§1751–1768) of subtitle B of title XVII of div. A of Pub. L. 115–232, which is classified principally to this subchapter, to reflect the probable intent of Congress. For complete classification of part I to the Code, see section 1751 of Pub. L. 115–232, set out as a Short Title note under section 4801 of this title and Tables.

The International Emergency Economic Powers Act, referred to in subsec. (e)(1)(B)(ii), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

## § 4820. Enforcement

### (a) Authorities

In order to enforce this subchapter, the Secretary, on behalf of the President, may exercise, in addition to relevant enforcement authorities of other Federal agencies, the authority to—

- (1) issue orders and guidelines;
- (2) require, inspect, and obtain books, records, and any other information from any person subject to the provisions of this subchapter;
- (3) administer oaths or affirmations and by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both;
- (4) conduct investigations within the United States and outside the United States consistent with applicable law;
- (5) inspect, search, detain, seize, or issue temporary denial orders with respect to items, in any form, that are subject to controls under this subchapter, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported, reexported, or in-country transferred in violation of this subchapter, or any regulations, order, license, or other authorization issued thereunder;
- (6) carry firearms;
- (7) conduct preclearance inspections and post-shipment verifications; and
- (8) execute warrants and make arrests.

### (b) Undercover investigations

#### (1) In general

Amounts made available to carry out this subchapter may be used by the Secretary to carry out undercover investigations that are necessary for detection and prosecution of violations of this subchapter, including to—

- (A) purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to—
  - (i) sections 1341 and 3324 of title 31;
  - (ii) section 8141 of title 40;
  - (iii) sections 3901, 6301(a) and (b)(1) to (3), and 6306 of title 41; and
  - (iv) chapter 45 of title 41; and

- (B) establish or acquire proprietary corporations or business entities as part of the undercover operation and operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31.

### (2) Deposit of amounts in banks or other financial institutions

Amounts made available to carry out this subchapter that are used to carry out undercover operations under paragraph (1) may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18 and section 3302 of title 31.

### (3) Offset of necessary and reasonable expenses

Any proceeds from an undercover operation carried out under paragraph (1) may be used to offset necessary and reasonable expenses incurred in such undercover operation without regard to the provisions of section 3302 of title 31.

### (4) Disposition of corporations and business entities

If a corporation or business entity established or acquired as part of an undercover operation carried out under paragraph (1) with a net value of over \$50,000 is to be liquidated, sold, or otherwise disposed of, the Secretary shall report the circumstances to the Comptroller General of the United States as much in advance of such disposition as the Secretary determines is practicable. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts. Any property or equipment purchased pursuant to paragraph (1) may be retained for subsequent use in undercover operations under this section. When such property or equipment is no longer needed, it shall be considered surplus and disposed of as surplus government property.

### (5) Deposit of proceeds

As soon as the proceeds from an undercover operation carried out under paragraph (1), with respect to which an action is certified and carried out under this subsection, are no longer needed for the conduct of such operation, the proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

### (c) Enforcement of subpoenas

In the case of contumacy by, or refusal to obey a subpoena issued to, any person under subsection (a)(3), a district court of the United States, after notice to such person and a 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, regardless of format, that are the subject of the subpoena. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

### (d) Best practice guidelines

#### (1) In general

The Secretary, in consultation with the heads of other appropriate Federal agencies, should publish and update “best practices” guidelines to assist persons in developing and implementing, on a voluntary basis, effective export control programs in compliance with the regulations issued under this subchapter.