

mentation to the President pursuant to paragraph (2)(A), the Secretary shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense.", and inserted at end "If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a license or other authority to export without such recommendation or notification."

Subsec. (g)(4). Pub. L. 100-418, §2425(a)(4), struck out par. (4) which read as follows: "Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 5 of this Act with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his decision, together with the recommendation of the Secretary of Defense."

Subsec. (m). Pub. L. 100-418, §2425(c), inserted sentence at end requiring the Secretary, not later than 120 days after Aug. 23, 1988, to report to Congress on steps taken to implement the plan developed to assist small businesses in the export licensing application process.

1985—Pub. L. 99-64, §111(e)(1), inserted "; other inquiries" in section catchline.

Subsec. (c). Pub. L. 99-94, §111(a)(2), (b)(1), substituted "Except as provided in subsection (o) of this section, in each case" for "In each case" and "60" for "90".

Subsec. (d). Pub. L. 99-64, §111(a)(3), (b)(2), substituted "Except in the case of exports described in subsection (o) of this section, in each case" for "In each case" and "20" for "30" in provisions preceding par. (1), and inserted flush provision following par. (2) relating to exports described in subsec. (o) when it becomes necessary to refer an application to another department or agency for information and recommendations.

Subsec. (e)(1). Pub. L. 99-64, §111(b)(3)(A), substituted "Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary the information or recommendations requested with respect to the application" for "Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary, within 30 days after its receipt of the application, the information or recommendations requested with respect to such application" and inserted sentence directing that information or recommendations be submitted within 20 days after the department or agency receives the application or, in the case of exports described in subsection (o), before the expiration of the time periods permitted by that subsection.

Subsec. (e)(2)(A). Pub. L. 99-64, §111(a)(3), (b)(3)(B)(i), designated existing provisions of par. (2) as subpar. (A) and substituted "Except in the case of exports described in subsection (o), if the head" for "If the head" and "20" for "30".

Subsec. (e)(2)(B). Pub. L. 99-64, §111(b)(3)(B)(ii), added subpar. (B).

Subsec. (f)(1). Pub. L. 99-64, §111(a)(2), (b)(4), substituted "60" for "90" in two places and inserted sentence providing that the provisions of this paragraph shall not apply in the case of exports described in subsection (o).

Subsec. (f)(2). Pub. L. 99-64, §111(c), inserted "in writing" after "inform the applicant", and substituted provisions describing the steps to which the applicant is entitled before a final determination with respect to the application is made and providing that the provisions of this paragraph shall not apply in the case of exports described in subsection (o), for provision that the Secretary accord the applicant an opportunity, before the final determination with respect to the appli-

cation is made, to respond in writing to such questions, considerations, or recommendations.

Subsec. (f)(3). Pub. L. 99-64, §111(d), inserted two new sentences describing the content of the writing which the applicant is entitled to receive when the Secretary determines that an application should be denied and directing that the Secretary allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied, and struck out existing sentence which had provided: "In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of the determination, of the statutory basis for denial, the policies set forth in section 3 of the Act [section 2402 of this Appendix] which would be furthered by denial, and, to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the denial, and of the availability of appeal procedures."

Subsec. (f)(4). Pub. L. 99-64, §111(b)(4), inserted sentence providing that provisions of this paragraph shall not apply in the case of exports described in subsec. (o).

Subsec. (g)(2). Pub. L. 99-64, §111(a)(3), substituted "20" for "30" in provisions preceding subpar. (A) and in provisions following subpar. (C).

Subsec. (h). Pub. L. 99-64, §111(a)(1), substituted "40" for "60" wherever appearing.

Subsec. (j)(3). Pub. L. 99-64, §111(a)(3), substituted "20" for "30".

Subsecs. (k) to (o). Pub. L. 99-64, §111(e)(2), added subsecs. (k) to (o).

#### REGULATIONS

Pub. L. 96-72, §19(b)(1), Sept. 29, 1979, 93 Stat. 535, provided that: "Regulations implementing the provisions of section 10 of this Act [this section] shall be issued and take effect not later than July 1, 1980."

#### DELEGATION OF FUNCTIONS

Functions conferred upon President under this section delegated to Secretary of Commerce by Ex. Ord. No. 12214, May 2, 1980, 45 F.R. 29783, set out under section 2403 of this Appendix, with exception of functions conferred upon President under subsec. (g) of this section which were reserved to President.

### § 2410. Violations

#### (a) In general

Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than 5 years, or both.

#### (b) Willful violations

(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act [sections 2401 to 2420 of this Appendix] for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 5 years, or both.

(3) Any person who possesses any goods or technology—

(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] or any regulation, order, or license issued with respect to such control, or

(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 [section 2404 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 [section 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix] shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act [sections 2401 to 2420 of this Appendix].

**(c) Civil penalties; administrative sanctions**

(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed \$10,000 for each violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix], either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act [section 2404 of this Appendix] or controls imposed

on the export of defense articles and defense services under section 38 of the Arms Export Control Act [22 U.S.C. 2778] may not exceed \$100,000.

(2)(A) The authority under this Act [sections 2401 to 2420 of this Appendix] to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix].

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act [sections 2401 to 2420 of this Appendix] for a violation of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix] 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, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix] shall be made available for public inspection and copying.

(3) An exception may not be made to any order issued under this Act [sections 2401 to 2420 of this Appendix] which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

**(d) Payment of penalties**

The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

**(e) Refunds**

Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c), or any amounts realized from the forfeiture of any property interest or proceeds pursuant to subsection (g), shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty imposed pursuant

to subsection (c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

**(f) Actions for recovery of penalties**

In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

**(g) Forfeiture of property interest and proceeds**

(1) Any person who is convicted under subsection (a) or (b) of a violation of an export control imposed under section 5 of this Act [section 2404 of this Appendix] (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

**(h) Prior convictions**

(1) No person convicted of a violation of this Act [sections 2401 to 2420 of this Appendix] (or any regulation, license, or order issued under this Act [sections 2401 to 2420 of this Appendix]), any regulation, license, or order issued under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.], section 793, 794, or 798 of title 18, United States Code, section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)),<sup>1</sup> or section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act [sections 2401 to 2420 of this Appendix] for a period of up to 10 years from the date of the conviction. The Sec-

retary may revoke any export license under this Act [sections 2401 to 2420 of this Appendix] in which such person has an interest at the time of the conviction.

(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, 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 section 13(c) of this Act [section 2412(c) of this Appendix].

**(i) Other authorities**

Nothing in subsection (c), (d), (f), (g), or (h) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act [sections 2401 to 2420 of this Appendix], or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix];

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act [sections 2401 to 2420 of this Appendix], or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix]; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

(Pub. L. 96-72, §11, Sept. 29, 1979, 93 Stat. 529; Pub. L. 97-145, §4(a)-(c), Dec. 29, 1981, 95 Stat. 1727; Pub. L. 99-64, title I, §112, July 12, 1985, 99 Stat. 146; Pub. L. 100-418, title II, §2426, Aug. 23, 1988, 102 Stat. 1361.)

REFERENCES IN TEXT

The International Emergency Economic Powers Act, referred to in subsec. (h)(1), 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 Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

Section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), referred to in subsec. (h)(1), was redesignated as section 4(a) of that Act, 50 U.S.C. 783(a), by Pub. L. 103-199, title VIII, §803(2)(B), Dec. 17, 1993, 107 Stat. 2329.

PRIOR PROVISIONS

A prior section 2410, Pub. L. 91-184, §11, Dec. 30, 1969, 83 Stat. 846; Pub. L. 95-52, title II, §204, June 22, 1977, 91 Stat. 247, defining "person" and "United States person" for purposes of the Export Administration Act of 1969, expired on Sept. 30, 1979.

AMENDMENTS

1988—Subsec. (h). Pub. L. 100-418, §2426, designated existing provisions as par. (1), inserted "this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act," after "violation of", and added par. (2).

1985—Subsec. (a). Pub. L. 99-64, §112(a), inserted "or conspires to or attempts to violate".

Subsec. (b)(1). Pub. L. 99-64, §112(b)(1), in provisions preceding subpar. (A), substituted "Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports in-

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

volved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes” for “Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes”.

Subsec. (b)(2). Pub. L. 99-64, § 112(b)(2), struck out sentence which provided that for purposes of this paragraph, “controlled country” means any country described in section 620(f) of the Foreign Assistance Act of 1961.

Subsec. (b)(3) to (5). Pub. L. 99-64, § 112(b)(3), added pars. (3) to (5).

Subsec. (c)(1). Pub. L. 99-64, § 112(c)(1), substituted “Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary)” for “head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof.”

Subsec. (c)(3), (4). Pub. L. 99-64, § 112(c)(2), added pars. (3) and (4).

Subsec. (e). Pub. L. 99-64, § 112(d), inserted “, or any amounts realized from the forfeiture of any property interest or proceeds pursuant to subsection (g),” after “Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c)”, and inserted “imposed pursuant to subsection (c)” after “refund any such penalty”.

Subsecs. (g), (h). Pub. L. 99-64, § 112(e)(2), added subsecs. (g) and (h). Former subsec. (g) redesignated (i).

Subsec. (i). Pub. L. 99-64, § 112(e)(1), (f), redesignated former subsec. (g) as (i) and substituted “(f), (g), or (h)” for “or (f)” in provisions preceding par. (1).

1981—Subsec. (b)(1). Pub. L. 97-145, § 4(a), in penalty provisions, substituted separate penalties for individuals and others in subpars. (A) and (B), for provisions prescribing a fine of not more than five times the value of the exports involved or \$100,000, whichever was greater, or imprisonment of not more than 10 years, or both.

Subsec. (b)(2). Pub. L. 97-145, § 4(b), in penalty provisions, substituted separate penalties for individuals and others in subpars. (A) and (B), for provisions prescribing a fine of not more than five times the value of the exports involved or \$100,000, whichever was greater, or imprisonment for not more than 5 years, or both.

Subsec. (c)(1). Pub. L. 97-145, § 3(c), inserted exception that the civil penalty for each violation involving national security controls imposed under section 2404 of this Appendix or controls imposed on the export of defense articles and defense services under section 2778 of title 22 may not exceed \$100,000.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-145, § 4(d), Dec. 29, 1981, 95 Stat. 1728, provided that: “The amendments made by this section [amending this section] apply with respect to violations occurring after the date of the enactment of this Act [Dec. 29, 1981].”

### § 2410a. Multilateral export control violations

#### (a) Determination by the President

The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that—

(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabili-

ties in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Security Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after the date of the enactment of the Export Enhancement Act of 1988 [Aug. 23, 1988].

#### (b) Sanctions

The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, subsidiary, and successor entity of the foreign person, and, except as provided in subsection (c), are as follows:

(1) a prohibition on contracting with, and procurement of products and services from, a sanctioned person, by any department, agency, or instrumentality of the United States Government, and

(2) a prohibition on importation into the United States of all products produced by a sanctioned person.

#### (c) Exceptions

The President shall not apply sanctions under this section—

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

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(B) if the President determines that the foreign person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

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

(2) to—

(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before the date on which the President notifies the Congress of the intention to impose the sanctions;

(B) spare parts;

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

(D) routine servicing and maintenance of products; or

(E) information and technology.

#### (d) Exclusion

The President shall not apply sanctions under this section to a parent, affiliate, subsidiary, and successor entity of a foreign person if the President determines that—

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not