

suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

(3) “United States” means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

(Added Pub. L. 103-236, title V, §506(a), Apr. 30, 1994, 108 Stat. 463; amended Pub. L. 103-415, §1(k), Oct. 25, 1994, 108 Stat. 4301; Pub. L. 103-429, §2(2), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 108-375, div. A, title X, §1089, Oct. 28, 2004, 118 Stat. 2067.)

#### AMENDMENTS

2004—Par. (3). Pub. L. 108-375 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “‘United States’ includes all areas under the jurisdiction of the United States including any of the places described in sections 5 and 7 of this title and section 46501(2) of title 49.”

1994—Par. (1). Pub. L. 103-415 substituted “within his custody” for “with custody”.

Par. (3). Pub. L. 103-429 substituted “section 46501(2) of title 49” for “section 101(38) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(38))”.

#### EFFECTIVE DATE

Pub. L. 103-236, title V, §506(c), Apr. 30, 1994, 108 Stat. 464, provided that: “The amendments made by this section [enacting this chapter] shall take effect on the later of—

“(1) the date of enactment of this Act [Apr. 30, 1994]; or

“(2) the date on which the United States has become a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.” [Convention entered into Force with respect to United States Nov. 20, 1994, Treaty Doc. 100-20.]

### § 2340A. Torture

(a) OFFENSE.—Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

(b) JURISDICTION.—There is jurisdiction over the activity prohibited in subsection (a) if—

(1) the alleged offender is a national of the United States; or

(2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

(c) CONSPIRACY.—A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.

(Added Pub. L. 103-236, title V, §506(a), Apr. 30, 1994, 108 Stat. 463; amended Pub. L. 103-322, title VI, §60020, Sept. 13, 1994, 108 Stat. 1979; Pub. L. 107-56, title VIII, §811(g), Oct. 26, 2001, 115 Stat. 381.)

#### AMENDMENTS

2001—Subsec. (c). Pub. L. 107-56 added subsec. (c).

1994—Subsec. (a). Pub. L. 103-322 inserted “punished by death or” before “imprisoned for any term of years or for life”.

#### EFFECTIVE DATE

Section effective on the later of Apr. 30, 1994, or the date on which the United States has become a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Nov. 20, 1994), see section 506(c) of Pub. L. 103-236, set out as a note under section 2340 of this title.

### § 2340B. Exclusive remedies

Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.

(Added Pub. L. 103-236, title V, §506(a), Apr. 30, 1994, 108 Stat. 464.)

#### EFFECTIVE DATE

Section effective on the later of Apr. 30, 1994, or the date on which the United States has become a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Nov. 20, 1994), see section 506(c) of Pub. L. 103-236, set out as a note under section 2340 of this title.

## CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO

Sec.	
2341.	Definitions.
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2346.	Enforcement and regulations.

#### AMENDMENTS

2006—Pub. L. 109-177, title I, §121(g)(3), (4)(A), Mar. 9, 2006, 120 Stat. 224, substituted “TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO” for “TRAFFICKING IN CONTRABAND CIGARETTES” in chapter heading, added items 2343 and 2345, and struck out former items 2343 “Recordkeeping and inspection” and 2345 “Effect on State law”.

### § 2341. Definitions

As used in this chapter—

(1) the term “cigarette” means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of

its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

(2) the term “contraband cigarettes” means a quantity in excess of 10,000 cigarettes, which bear no evidence of the payment of applicable State or local cigarette taxes in the State or locality where such cigarettes are found, if the State or local government requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes, and which are in the possession of any person other than—

(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as a manufacturer of tobacco products or as an export warehouse proprietor, or a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555) or an agent of such person;

(B) a common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of such cigarettes;

(C) a person—

(i) who is licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by such State; and

(ii) who has complied with the accounting and payment requirements relating to such license or authorization with respect to the cigarettes involved; or

(D) an officer, employee, or other agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State) having possession of such cigarettes in connection with the performance of official duties;

(3) the term “common or contract carrier” means a carrier holding a certificate of convenience and necessity, a permit for contract carrier by motor vehicle, or other valid operating authority under subtitle IV of title 49, or under equivalent operating authority from a regulatory agency of the United States or of any State;

(4) the term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands;

(5) the term “Attorney General” means the Attorney General of the United States;

(6) the term “smokeless tobacco” means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted;

(7) the term “contraband smokeless tobacco” means a quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, that are in the possession of any person other than—

(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as manufacturer<sup>1</sup> of tobacco products or as an export warehouse proprietor, a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311, 1555), or an agent of such person;

(B) a common carrier transporting such smokeless tobacco under a proper bill of lading or freight bill which states the quantity, source, and designation of such smokeless tobacco;

(C) a person who—

(i) is licensed or otherwise authorized by the State where such smokeless tobacco is found to engage in the business of selling or distributing tobacco products; and

(ii) has complied with the accounting, tax, and payment requirements relating to such license or authorization with respect to such smokeless tobacco; or

(D) an officer, employee, or agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State), having possession of such smokeless tobacco in connection with the performance of official duties;<sup>2</sup>

(Added Pub. L. 95-575, §1, Nov. 2, 1978, 92 Stat. 2463; amended Pub. L. 97-449, §5(c), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 107-296, title XI, §1112(i)(1), Nov. 25, 2002, 116 Stat. 2277; Pub. L. 109-177, title I, §121(a)(1), (b)(1), (6), Mar. 9, 2006, 120 Stat. 221, 222.)

#### REFERENCES IN TEXT

Chapter 52 of the Internal Revenue Code of 1986, referred to in pars. (2)(A) and (7)(A), is classified generally to chapter 52 (§5701 et seq.) of Title 26, Internal Revenue Code.

#### AMENDMENTS

2006—Par. (2). Pub. L. 109-177, §121(b)(6), which directed amendment of par. (2) by substituting “State or local cigarette taxes in the State or locality where such cigarettes are found, if the State or local government” for “State cigarette taxes in the State where such cigarettes are found, if the State” in introductory provisions, was executed by making the substitution for “State cigarette taxes in the State where such cigarettes are found, if such State”, to reflect the probable intent of Congress.

Pub. L. 109-177, §121(a)(1), substituted “10,000 cigarettes” for “60,000 cigarettes” in introductory provisions.

Pars. (6), (7). Pub. L. 109-177, §121(b)(1), added pars. (6) and (7).

2002—Par. (5). Pub. L. 107-296 added par. (5) and struck out former par. (5) which read as follows: “the term ‘Secretary’ means the Secretary of the Treasury.”

1986—Par. (2)(A). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1983—Par. (3). Pub. L. 97-449 substituted “subtitle IV of title 49” for “the Interstate Commerce Act”.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as

<sup>1</sup> So in original. Probably should be “a manufacturer”.

<sup>2</sup> So in original. The semicolon probably should be a period.

an Effective Date note under section 101 of Title 6, Domestic Security.

#### EFFECTIVE DATE

Pub. L. 95-575, § 4, Nov. 2, 1978, 92 Stat. 2466, provided: "(a) Except as provided in subsection (b), this Act [enacting this chapter, amending section 1961 of this title and sections 781 and 787 of former Title 49, Transportation, and enacting provisions set out as a note under this section] shall take effect on the date of its enactment [Nov. 2, 1978]."

"(b) Sections 2342(b) and 2343 of title 18, United States Code as enacted by the first section of this Act, shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act [Nov. 2, 1978]."

#### AUTHORIZATION OF APPROPRIATIONS

Pub. L. 95-575, § 5, Nov. 2, 1978, 92 Stat. 2466, provided that: "There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of chapter 114 of title 18, United States Code, added by the first section of this Act."

### § 2342. Unlawful acts

(a) It shall be unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes or contraband smokeless tobacco.

(b) It shall be unlawful for any person knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records of any person who ships, sells, or distributes any quantity of cigarettes in excess of 10,000 in a single transaction.

(Added Pub. L. 95-575, § 1, Nov. 2, 1978, 92 Stat. 2464; amended Pub. L. 109-177, title I, § 121(a)(2), (b)(2), Mar. 9, 2006, 120 Stat. 221, 222.)

#### AMENDMENTS

2006—Subsec. (a). Pub. L. 109-177, § 121(b)(2), inserted "or contraband smokeless tobacco" after "contraband cigarettes".

Subsec. (b). Pub. L. 109-177, § 121(a)(2), substituted "10,000" for "60,000".

#### EFFECTIVE DATE

Subsec. (a) of this section effective Nov. 2, 1978, and subsec. (b) of this section effective on first day of first month beginning more than 120 days after Nov. 2, 1978, see section 4 of Pub. L. 95-575, set out as a note under section 2341 of this title.

### § 2343. Recordkeeping, reporting, and inspection

(a) Any person who ships, sells, or distributes any quantity of cigarettes in excess of 10,000, or any quantity of smokeless tobacco in excess of 500 single-unit consumer-sized cans or packages, in a single transaction shall maintain such information about the shipment, receipt, sale, and distribution of cigarettes as the Attorney General may prescribe by rule or regulation. The Attorney General may require such person to keep such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—

(1) the name, address, destination (including street address), vehicle license number, driver's license number, signature of the person receiving such cigarettes, and the name of the purchaser;

(2) a declaration of the specific purpose of the receipt (personal use, resale, or delivery to another); and

(3) a declaration of the name and address of the recipient's principal in all cases when the recipient is acting as an agent.

Such information shall be contained on business records kept in the normal course of business.

(b) Any person, except for a tribal government, who engages in a delivery sale, and who ships, sells, or distributes any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, within a single month, shall submit to the Attorney General, pursuant to rules or regulations prescribed by the Attorney General, a report that sets forth the following:

(1) The person's beginning and ending inventory of cigarettes and cans or packages of smokeless tobacco (in total) for such month.

(2) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person received within such month from each other person (itemized by name and address).

(3) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.

(c)(1) Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, during normal business hours, enter the premises of any person described in subsection (a) or (b) for the purposes of inspecting—

(A) any records or information required to be maintained by the person under this chapter; or

(B) any cigarettes or smokeless tobacco kept or stored by the person at the premises.

(2) The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by paragraph (1).

(3) Whoever denies access to an officer under paragraph (1), or who fails to comply with an order issued under paragraph (2), shall be subject to a civil penalty in an amount not to exceed \$10,000.

(d) Any report required to be submitted under this chapter to the Attorney General shall also be submitted to the Secretary of the Treasury and to the attorneys general and the tax administrators of the States from where the shipments, deliveries, or distributions both originated and concluded.

(e) In this section, the term "delivery sale" means any sale of cigarettes or smokeless tobacco in interstate commerce to a consumer if—

(1) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or by any other means where the consumer is not in the same physical location as the seller when the purchase or offer of sale is made; or

(2) the cigarettes or smokeless tobacco are delivered by use of the mails, common carrier, private delivery service, or any other means where the consumer is not in the same physical location as the seller when the consumer obtains physical possession of the cigarettes or smokeless tobacco.