

§ 2593e. Measures against persons involved in activities that violate arms control treaties or agreements with the United States

(a) Reports on persons that violate treaties or agreements

(1) In general

Not later than 30 days after the submittal to Congress of an annual report on the status of United States policy and actions with respect to arms control, nonproliferation, and disarmament pursuant to section 2593a of this title, the Secretary of the Treasury shall submit to the appropriate congressional committees a report, consistent with the protection of intelligence sources and methods, identifying every person with respect to whom there is credible information indicating that—

(A) the person—

(i) (I) is an individual who is a citizen, national, or permanent resident of a country described in paragraph (2); or

(II) is an entity organized under the laws of a country described in paragraph (2); and

(ii) has engaged in any activity that contributed to or is a significant factor in the President's or the Secretary of State's determination that such country is not in full compliance with its obligations as further described in paragraph (2); or

(B) the person has provided material support for such non-compliance to a person described in subparagraph (A).

(2) Country described

A country described in this paragraph is a country (other than a country described in paragraph (3)) that the President or the Secretary of State has determined, in the most recent annual report described in paragraph (1), to be not in full compliance with its obligations undertaken in all arms control, nonproliferation, and disarmament agreements or commitments to which the United States is a participating state.

(3) Excluded countries

The following countries are not described for purposes of paragraph (2):

(A) The United States.

(B) Any country determined by the Director of National Intelligence to be closely cooperating in intelligence matters with the United States in the period covered by the most recent annual report described in paragraph (1), regardless of the extent of the compliance of such country with the obligations described in paragraph (2) during such period.

(b) Imposition of measures

Except as provided in subsections (d), (e), and (f), the President shall impose the measures described in subsection (c) with respect to each person identified in a report under subsection (a).

(c) Measures described

(1) In general

The measures to be imposed with respect to a person under subsection (b) are the head of

any executive agency (as defined in section 133 of title 41) may not enter into, renew, or extend a contract for the procurement of goods or services with the person.

(2) Exception for major routes of supply

The requirement to impose measures under paragraph (1) shall not apply with respect to any contract for the procurement of goods or services along a major route of supply to a zone of active combat or major contingency operation.

(3) Requirement to revise regulations

(A) In general

Not later than 90 days after December 23, 2016, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to implement paragraph (1).

(B) Certifications

The revisions to the Federal Acquisition Regulation under subparagraph (A) shall include a requirement for a certification from each person that is a prospective contractor that the person, and any person owned or controlled by the person, does not engage in any activity described in subsection (a)(1)(A)(ii).

(C) Remedies

If the head of an executive agency determines that a person has submitted a false certification under subparagraph (B) on or after the date on which the applicable revision of the Federal Acquisition Regulation required by this paragraph becomes effective—

(i) the head of that executive agency shall terminate a contract with such person or debar or suspend such person from eligibility for Federal contracts for a period of not less than 2 years;

(ii) any such debarment or suspension shall be subject to the procedures that apply to debarment and suspension under the Federal Acquisition Regulation under subpart 9.4 of part 9 of title 48, Code of Federal Regulations; and

(iii) the Administrator of General Services shall include on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the Administrator under part 9 of the Federal Acquisition Regulation each person that is debarred, suspended, or proposed for debarment or suspension by the head of an executive agency on the basis of a determination of a false certification under subparagraph (B).

(d) Waiver for lack of knowing violation

(1) In general

The President may waive the application of measures on a case-by-case basis under subsection (b) with respect to a person if the President—

(A) determines that—

(i) (I) in the case of a person described in subsection (a)(1)(A), the person did not

knowingly engage in any activity described in such subsection;

(II) in the case of a person described in subsection (a)(1)(B), the person conducted or facilitated a transaction or transactions with, or provided financial services to, a person described in subsection (a)(1)(A) that did not knowingly engage in any activity described in such subsection; and

(III) in the case of a person described in subsection (a)(1)(A) or (a)(1)(B), the person has terminated the activity for which otherwise covered by such subsection or has provided verifiable assurances that the person will terminate such activity; and

(ii) the waiver is in the national security interest of the United States; and

(B) submits to the appropriate congressional committees a report on the determination and the reasons for the determination.

(2) Form of report

The report required by paragraph (1)(B) shall be submitted in unclassified form, but may include a classified annex.

(e) Waiver to prevent disclosure of intelligence sources and methods

The President may waive the application of measures on a case-by-case basis under subsection (b) with respect to a person if the President—

(1) determines that the waiver is necessary to prevent the disclosure of intelligence sources or methods; and

(2) submits to the appropriate congressional committees a report, consistent with the protection of intelligence sources and methods, on the determination and the reasons for the determination.

(f) Timing of imposition

(1) In general

Except as provided in paragraph (2), the President shall immediately impose measures under subsection (b) against a person described in subsection (a)(1) upon the submittal to Congress of the report identifying the person pursuant to subsection (a)(1) unless the President determines and certifies to the appropriate congressional committees that the government of the country concerned has taken specific and effective actions, including, as appropriate, the imposition of appropriate penalties, to terminate the involvement of the person in the activities that resulted in the identification of the person in the report.

(2) Delay

(A) In general

The President may delay the imposition of measures against a person for up to 120 days after the date of the submittal to Congress of the report identifying the person pursuant to subsection (a)(1) if the President initiates consultations with the government concerned with respect to the taking of actions described in paragraph (1).

(B) Additional delay

The President may delay the imposition of measures for up to an additional 120 days

after the delay authorized by subparagraph (A) if the President determines and certifies to the appropriate congressional committees that the government concerned is in the process of taking the actions described in paragraph (1).

(3) Report

Not later than 60 days after the submittal to Congress of the report identifying a person pursuant to subsection (a)(1), the President shall submit to the appropriate congressional committees a report on the status of consultations, if any, with the government concerned under this subsection, and the basis for any determination under paragraph (1).

(g) Termination

(1) Termination through compliance of country with arms control and other agreements

The measures imposed with respect to a person under subsection (b) shall terminate on the date on which the President submits to Congress a subsequent annual report pursuant to section 2593a of this title that does not contain a determination of the President that the country described in subsection (a)(2) with respect to which the measures were imposed with respect to the person is a country that is not in full compliance with its obligations undertaken in all arms control, nonproliferation, and disarmament agreements or commitments to which the United States is a participating state.

(2) Termination through cessation by person of violating activities

In addition to termination provided for by paragraph (1), the measures imposed with respect to a person under subsection (b) in connection with a particular activity shall terminate upon a determination of the President that the person has ceased such activity. The termination of measures imposed with respect to a person in connection with a particular activity pursuant to this paragraph shall not result in the termination of any measures imposed with respect to the person in connection with any other activity for which measures were imposed under subsection (b).

(h) Appropriate congressional committees defined

In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives; and

(2) the Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate.

(Pub. L. 114-328, div. A, title XII, § 1290, Dec. 23, 2016, 130 Stat. 2555.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2017, and not as part of the Arms Control and Disarmament Act which comprises this chapter.

SUBCHAPTER V—ON-SITE INSPECTION
ACTIVITIES

§ 2595. Findings

The Congress finds that—

(1) under this chapter, the Department of State is charged with the “formulation and implementation of United States arms control and disarmament policy in a manner which will promote the national security”;

(2) the On-Site Inspection Agency was established in 1988 pursuant to the INF Treaty to implement, on behalf of the United States, the inspection provisions of the INF Treaty;

(3) on-site inspection activities under the INF Treaty include—

(A) inspections in Russia, Ukraine, Kazakhstan, Belarus, Turkmenistan, Uzbekistan, the Czech Republic, and Germany,

(B) escort duties for teams visiting the United States and the Basing Countries,

(C) establishment and operation of the Portal Monitoring Facility in Russia, and

(D) support for the inspectors at the Portal Monitoring Facility in Utah;

(4) the On-Site Inspection Agency has additional responsibilities to those specified in paragraph (3), including the monitoring of nuclear tests pursuant to the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty and the monitoring of the inspection provisions of such additional arms control agreements as the President may direct;

(5) the personnel of the On-Site Inspection Agency include civilian technical experts, civilian support personnel, and members of the Armed Forces; and

(6) the senior officials of the On-Site Inspection Agency include representatives from the Department of State.

(Pub. L. 87-297, title V, §501, formerly §61, as added Pub. L. 101-216, title II, §201, Dec. 11, 1989, 103 Stat. 1855; amended Pub. L. 102-228, title IV, §402(a)(1), Dec. 12, 1991, 105 Stat. 1699; Pub. L. 103-199, title IV, §401(d), Dec. 17, 1993, 107 Stat. 2324; renumbered and amended Pub. L. 105-277, div. G, subdiv. A, title XII, §1223(17), (21), Oct. 21, 1998, 112 Stat. 2681-772.)

AMENDMENTS

1998—Par. (1). Pub. L. 105-277, §1223(17)(A), substituted “Department of State” for “United States Arms Control and Disarmament Agency”.

Par. (2). Pub. L. 105-277, §1223(17)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “as defined in this chapter, the terms ‘arms control’ and ‘disarmament’ mean ‘the identification, verification, inspection, limitation, control, reduction, or elimination, of armed forces and armaments of all kinds under international agreement to establish an effective system of international control’;”.

Par. (3). Pub. L. 105-277, §1223(17)(C), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Par. (4). Pub. L. 105-277, §1223(17)(C), (D), redesignated par. (5) as (4) and substituted “paragraph (3)” for “paragraph (4)”. Former par. (4) redesignated (3).

Par. (5). Pub. L. 105-277, §1223(17)(C), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pars. (6), (7). Pub. L. 105-277, §1223(17)(C), (E), redesignated par. (7) as (6) and struck out “United States Arms Control and Disarmament Agency and the” be-

fore “Department of State”. Former par. (6) redesignated (5).

1993—Par. (4)(A). Pub. L. 103-199, §401(d)(1), substituted “Russia, Ukraine, Kazakhstan, Belarus, Turkmenistan, Uzbekistan, the Czech Republic, and Germany” for “the Soviet Union, Czechoslovakia, and the German Democratic Republic”.

Par. (4)(B). Pub. L. 103-199, §401(d)(2), struck out “Soviet” before “teams”.

Par. (4)(C). Pub. L. 103-199, §401(d)(3), substituted “Russia” for “the Soviet Union”.

Par. (4)(D). Pub. L. 103-199, §401(d)(4), struck out “Soviet” before “inspectors”.

1991—Pars. (5) to (7). Pub. L. 102-228 added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective Apr. 1, 1999, see section 1201 of Pub. L. 105-277, set out as an Effective Date note under section 6511 of this title.

ACCOUNTING FOR REIMBURSABLE EXPENSES INCURRED
BY DEPARTMENT OF DEFENSE ON BEHALF OF SOVIET
UNION OR SUCCESSOR ENTITIES IN MONITORING INF
TREATY

Pub. L. 103-139, title VIII, §8033, Nov. 11, 1993, 107 Stat. 1447, provided that: “During the current fiscal year and thereafter, of the funds appropriated, reimbursable expenses incurred by the Department of Defense on behalf of the Soviet Union or its successor entities in monitoring United States implementation of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range or Shorter-Range Missiles (‘INF Treaty’), concluded December 8, 1987, may be treated as orders received and obligation authority for the applicable appropriation, account, or fund increased accordingly. Likewise, any reimbursements received for such costs may be credited to the same appropriation, account, or fund to which the expenses were charged: *Provided*, That reimbursements which are not received within one hundred and eighty days after submission of an appropriate request for payment shall be subject to interest at the current rate established pursuant to section 2(b)(1)(B) of the Export-Import Bank Act of 1945 (59 Stat. 526) [12 U.S.C. 635(b)(1)(B)]. Interest shall begin to accrue on the one hundred and eighty-first day following submission of an appropriate request for payment: *Provided further*, That funds appropriated in this Act [see Tables for classification] may be used to reimburse United States military personnel for reasonable costs of subsistence, at rates to be determined by the Secretary of Defense, incurred while accompanying Soviet Inspection Team members or inspection team members of the successor entities of the Soviet Union engaged in activities related to the INF Treaty: *Provided further*, That this provision includes only the in-country period (referred to in the INF Treaty) and is effective whether such duty is performed at, near, or away from an individual’s permanent duty station.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-396, title IX, §9045, Oct. 6, 1992, 106 Stat. 1912.

Pub. L. 102-172, title VIII, §8045, Nov. 26, 1991, 105 Stat. 1182.

Pub. L. 101-511, title VIII, §8049, Nov. 5, 1990, 104 Stat. 1885.

Pub. L. 101-165, title IX, §9062, Nov. 21, 1989, 103 Stat. 1142.

Pub. L. 100-463, title VIII, §8138, Oct. 1, 1988, 102 Stat. 2270-46.

UNITED STATES PROGRAM FOR ON-SITE INSPECTIONS
UNDER ARMS CONTROL AGREEMENTS

Pub. L. 101-189, div. A, title X, §1014, Nov. 29, 1989, 103 Stat. 1547, provided that: