

or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Special rules

Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Rule of construction

Nothing in this subsection may be construed to supersede or limit the operation of the anti-trust or civil rights laws of the United States.

(5) Application

This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) Foreign policy controls

(1) In general

In addition to the regulations issued pursuant to subsection (a), regulations issued under subchapter I to carry out the policies set forth in section 4811(2)(D) of this title shall implement the policies set forth in this section.

(2) Requirements

Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in subsection (a) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 4841 of this title.

(c) Preemption

The provisions of this section and the regulations issued pursuant thereto shall preempt any

law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States.

(Pub. L. 115-232, div. A, title XVII, § 1773, Aug. 13, 2018, 132 Stat. 2234; Pub. L. 116-283, div. A, title X, § 1081(d)(10), Jan. 1, 2021, 134 Stat. 3874.)

REFERENCES IN TEXT

Subchapter I, referred to in subsec. (b)(1), was in the original “part I”, 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 subchapter I of this chapter. 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.

AMENDMENTS

2021—Subsec. (b)(1), Pub. L. 116-283 substituted “(2)(D)” for “(1)(D)” in reference to section 4811(2)(D) of this title.

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)(10) is effective as of Aug. 13, 2018, and as if included in Pub. L. 115-232.

§ 4843. Enforcement

(a) Criminal penalty

A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act under section 4842 of this title—

(1) shall, upon conviction, be fined not more than \$1,000,000; or

(2) if a natural person, may be imprisoned for not more than 20 years, or both.

(b) Civil penalties

The President may impose the following civil penalties on a person who violates section 4842 of this title or any regulation issued under this subchapter:

(1) 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.

(2) Revocation of a license issued under subchapter I to the person.

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

(c) Procedures

Any civil penalty or administrative sanction (including any suspension or revocation of authority to export) under this section 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 and shall be subject to judicial review in accordance with chapter 7 of such title.

(d) Standards for levels of civil penalty

The President may by regulation provide standards for establishing levels of civil penalty

under this section based upon factors such as the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

(Pub. L. 115–232, div. A, title XVII, §1774, Aug. 13, 2018, 132 Stat. 2237; Pub. L. 116–283, div. A, title X, §1081(d)(11), Jan. 1, 2021, 134 Stat. 3874.)

REFERENCES IN TEXT

Subchapter I, referred to in subsec. (b)(2), (3), was in the original “part I”, 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 subchapter I of this chapter. 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.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 inserted “under” before “section 4842 of this title”.

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)(11) is effective as of Aug. 13, 2018, and as if included in Pub. L. 115–232.

SUBCHAPTER III—ADMINISTRATIVE AUTHORITIES

§ 4851. Under Secretary of Commerce for Industry and Security

(a) Under Secretary of Commerce for Industry and Security

The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Industry and Security, who shall carry out—

- (1) all functions of the Secretary under this chapter; and
- (2) all functions delegated to the Under Secretary of Commerce for Export Administration on the day before the date of the enactment of this Act.

(b) Reference

On and after August 13, 2018, any reference in any law or regulation to the Under Secretary of Commerce for Export Administration shall be deemed to be a reference to the Under Secretary of Commerce for Industry and Security.

(c) Omitted

(d) Continuation in office

The individual serving as Under Secretary of Commerce for Export Administration on the day before August 13, 2018, may serve as the Under Secretary of Commerce for Industry and Security on and after that date without the need for renomination or reappointment.

(Pub. L. 115–232, div. A, title XVII, §1781, Aug. 13, 2018, 132 Stat. 2238; Pub. L. 116–6, div. H, title II, §205(a), Feb. 15, 2019, 133 Stat. 476.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original “this subtitle”, meaning subtitle B (§§1741–1781) of title XVII of div. A of Pub. L. 115–232, Aug. 13, 2018, 132 Stat. 2208, known as the Export Control Reform Act of 2018, which is classified principally

to this chapter. For complete classification of subtitle B to the Code, see section 1741 of Pub. L. 115–232, set out as a Short Title note under section 4801 of this title and Tables.

The date of the enactment of this Act, referred to in subsec. (a)(2), probably means the date of enactment of Pub. L. 115–232, which enacted this section and was approved Aug. 13, 2018.

CODIFICATION

Section is comprised of section 1781 of Pub. L. 115–232. Subsec. (c) of section 1781 of Pub. L. 115–232 amended section 5314 of Title 5, Government Organization and Employees.

AMENDMENTS

2019—Pub. L. 116–6, §205(a)(3), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 116–6, §205(a)(1), (2), redesignated subsec. (a) as (b) and substituted “Reference” for “In general” in heading. Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub. L. 116–6, §205(a)(1), redesignated subsecs. (b) and (c) as (c) and (d), respectively.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–6, div. H, title II, §205(d), Feb. 15, 2019, 133 Stat. 477, provided that: “The amendments made by this section [amending this section and section 5314 of Title 5, Government Organization and Employees] shall take effect as if included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232).”

§ 4852. Assistant Secretaries of Commerce

(a) In general

The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary of Commerce for Industry and Security in carrying out the functions described in paragraphs (1) and (2) of section 4851(a) of this title.

(b) Continuation in office of one Assistant Secretary

An individual appointed as an Assistant Secretary of Commerce under section 15(a) of the Export Administration Act of 1979¹ (as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)) and serving in that position on the day before the date of the enactment of this Act may serve in one of the Assistant Secretary positions established under subsection (a) on and after that date without the need for renomination or reappointment.

(Pub. L. 115–232, div. A, title XVII, §1782, as added Pub. L. 116–6, div. H, title II, §205(b), Feb. 15, 2019, 133 Stat. 476.)

REFERENCES IN TEXT

Section 15(a) of the Export Administration Act of 1979, referred to subsec. (b), was classified to section 4617(a) of this title prior to repeal by Pub. L. 115–232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232.

The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), referred to in subsec. (b), 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.

¹ See References in Text note below.