

§ 6303. Prohibition on assisting nuclear proliferation through provision of financing

(a) “Prohibited activity” defined

For purposes of this section, the term “prohibited activity” means the act of knowingly, materially, and directly contributing or attempting to contribute, through the provision of financing, to—

- (1) the acquisition of unsafeguarded special nuclear material; or
- (2) the use, development, production, stockpiling, or other acquisition of any nuclear explosive device,

by any individual, group, or non-nuclear-weapon state.

(b) Prohibition

To the extent that the United States has jurisdiction to prohibit such activity by such person, no United States person and no foreign person may engage in any prohibited activity.

(c) Presidential determination and order with respect to United States and foreign persons

If the President determines,¹ that a United States person or a foreign person has engaged in a prohibited activity (without regard to whether subsection (b) applies), the President shall, by order, impose the sanctions described in subsection (d) on such person.

(d) Sanctions

The following sanctions shall be imposed pursuant to any order issued under subsection (c) with respect to any United States person or any foreign person:

(1) Ban on dealings in Government finance

(A) Designation as primary dealer

Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, the person as a primary dealer in United States Government debt instruments.

(B) Service as depository

The person may not serve as a depository for United States Government funds.

(2) Restrictions on operations

The person may not, directly or indirectly—

- (A) commence any line of business in the United States in which the person was not engaged as of the date of the order; or
- (B) conduct business from any location in the United States at which the person did not conduct business as of the date of the order.

(e) Consultation with and actions by foreign government of jurisdiction

(1) Consultations

If the President makes a determination under subsection (c) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with any appropriate foreign government with respect to the imposition of any sanction pursuant to this section.

(2) Actions by government of jurisdiction

(A) Suspension of period for imposing sanctions

In order to pursue consultations described in paragraph (1) with any government referred to in such paragraph, the President may delay, for up to 90 days, the effective date of an order under subsection (c) imposing any sanction.

(B) Coordination with activities of foreign government

Following consultations described in paragraph (1), the order issued by the President under subsection (c) imposing any sanction on a foreign person shall take effect unless the President determines, and certifies in writing to the Congress, that the government referred to in paragraph (1) has taken specific and effective actions, including the imposition of appropriate penalties, to terminate the involvement of the foreign person in any prohibited activity.

(C) Extension of period

After the end of the period described in subparagraph (A), the President may delay, for up to an additional 90 days, the effective date of an order issued under subsection (b) imposing any sanction on a foreign person if the President determines, and certifies in writing to the Congress, that the appropriate foreign government is in the process of taking actions described in subparagraph (B).

(3) Report to Congress

Before the end of the 90-day period beginning on the date on which an order is issued under subsection (c), the President shall submit to the Congress a report on—

- (A) the status of consultations under this subsection with the government referred to in paragraph (1); and
- (B) the basis for any determination under paragraph (2) that such government has taken specific corrective actions.

(f) Termination of sanctions

Any sanction imposed on any person pursuant to an order issued under subsection (c) shall—

- (1) remain in effect for a period of not less than 12 months; and
- (2) cease to apply after the end of such 12-month period only if the President determines, and certifies in writing to the Congress, that—

- (A) the person has ceased to engage in any prohibited activity; and
- (B) the President has received reliable assurances from such person that the person will not, in the future, engage in any prohibited activity.

(g) Waiver

The President may waive the continued application of any sanction imposed on any person pursuant to an order issued under subsection (c) if the President determines, and certifies in writing to the Congress, that the continued imposition of the sanction would have a serious adverse effect on the safety and soundness of the

¹ So in original.

domestic or international financial system or on domestic or international payments systems.

(h) Enforcement action

The Attorney General may bring an action in an appropriate district court of the United States for injunctive and other appropriate relief with respect to—

- (1) any violation of subsection (b); or
- (2) any order issued pursuant to subsection (c).

(i) “Knowingly” defined

(1) In general

For purposes of this section, the term “knowingly” means the state of mind of a person with respect to conduct, a circumstance, or a result in which—

- (A) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
- (B) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(2) Knowledge of the existence of a particular circumstance

If knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(j) Scope of application

This section shall apply with respect to prohibited activities which occur on or after the date this subchapter takes effect.

(Pub. L. 103–236, title VIII, § 824, Apr. 30, 1994, 108 Stat. 512; Pub. L. 104–164, title I, § 157(b), July 21, 1996, 110 Stat. 1440.)

Editorial Notes

REFERENCES IN TEXT

For the date this subchapter takes effect, referred to in subsec. (j), as 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103–236, set out as an Effective Date note under section 6301 of this title.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–164, § 157(b)(1), struck out “in writing after opportunity for a hearing on the record” after “If the President determines.”

Subsec. (e). Pub. L. 104–164, § 157(b)(2), (3), redesignated subsec. (f) as (e) and struck out heading and text of former subsec. (e). Text read as follows: “Any determination of the President under subsection (c) of this section shall be subject to judicial review in accordance with chapter 7 of part I of title 5.”

Subsecs. (f) to (k). Pub. L. 104–164, § 157(b)(3), redesignated subsecs. (g) to (k) as (f) to (j), respectively. Former subsec. (f) redesignated (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103–236, set out as a note under section 6301 of this title.

§ 6304. Reporting on demarches

(1) It is the sense of the Congress that the Department of State should, in the course of im-

plementing its reporting responsibilities under section 3282(c) of this title, include a summary of demarches that the United States has issued or received from foreign governments with respect to activities which are of significance from the proliferation standpoint.

(2) For purposes of this section, the term “demarche” means any official communication by one government to another, by written or oral means, intended by the originating government to express—

(A) a concern over a past, present, or possible future action or activity of the recipient government, or of a person within the jurisdiction of that government, contributing to the global spread of unsafeguarded special nuclear material or of nuclear explosive devices;

(B) a request for the recipient government to counter such action or activity; or

(C) both the concern and request described in subparagraphs (A) and (B).

(Pub. L. 103–236, title VIII, § 828(b), Apr. 30, 1994, 108 Stat. 520.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103–236, set out as a note under section 6301 of this title.

§ 6305. Definitions

For purposes of this subchapter—

(1) the term “foreign person” means—

(A) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(B) a corporation, partnership, or other nongovernment entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States;

(2) the term “goods or technology” means—

(A) nuclear materials and equipment and sensitive nuclear technology (as such terms are defined in section 3203 of this title), all export items designated by the President pursuant to section 2139a(c) of title 42, and all technical assistance requiring authorization under section 2077(b) of title 42, and

(B) in the case of exports from a country other than the United States, any goods or technology that, if exported from the United States, would be goods or technology described in subparagraph (A);

(3) the term “IAEA safeguards” means the safeguards set forth in an agreement between a country and the International Atomic Energy Agency, as authorized by Article III(A)(5) of the Statute of the International Atomic Energy Agency;

(4) the term “nuclear explosive device” means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT);