

(2) Procedures

Any civil penalty under this subsection 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.

(3) Standards for levels of civil penalty

The Secretary may by regulation provide standards for establishing levels of civil penalty under this subsection based upon factors such as the seriousness of the violation, the culpability of the violator, and such mitigating factors as the violator's record of cooperation with the Government in disclosing the violation.

(d) Criminal forfeiture**(1) In general**

Any person who is convicted under subsection (b) of a violation of a control imposed under section 4812 of this title (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States any of the person's property—

(A) used or intended to be used, in any manner, to commit or facilitate the violation;

(B) constituting or traceable to the gross proceeds taken, obtained, or retained, in connection with or as a result of the violation; or

(C) constituting an item or technology that is exported or intended to be exported in violation of this subchapter.¹

(2) Procedures

The procedures in any forfeiture under this subsection shall be governed by the procedures established under section 853 of title 21, other than subsection (d) of such section.

(e) Prior convictions**(1) License bar****(A) In general**

The Secretary may—

(i) deny the eligibility of any person convicted of a criminal violation described in subparagraph (B) to export, reexport, or in-country transfer outside the United States any item, whether or not subject to controls under this subchapter, for a period of up to 10 years beginning on the date of the conviction; and

(ii) revoke any license or other authorization to export, reexport, or in-country transfer items that was issued under this subchapter and in which such person has an interest at the time of the conviction.

(B) Violations

The violations referred to in subparagraph (A) are any criminal violations of, or criminal attempt or conspiracy to violate—

(i) this subchapter (or any regulation, license, or order issued under this subchapter);

(ii) any regulation, license, or order issued under the International Emergency

Economic Powers Act [50 U.S.C. 1701 et seq.];

(iii) section 371, 554, 793, 794, or 798 of title 18;

(iv) section 1001 of title 18;

(v) section 783(b) of this title; or

(vi) section 2778 of title 22.

(2) Application to other parties

The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or business, 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 subsection (c)(2).

(f) Other authorities

Nothing in subsection (c), (d), or (e) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this subchapter, or any regulation, order, license or other authorization issued under this subchapter;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this subchapter, or any regulation, order, license, or other authorization issued under this subchapter; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 401(b) of title 22.

(Pub. L. 115-232, div. A, title XVII, § 1760, Aug. 13, 2018, 132 Stat. 2223.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (c)(1), (e)(1), and (f)(1), (2), was in the original "this part", 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 this subchapter. 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.

This subchapter, referred to in subsec. (d)(1)(C), was in the original "this title", and was translated as meaning part I (§§ 1751-1768) of subtitle B of title XVII of div. A of Pub. L. 115-232, which is classified principally to this subchapter, to reflect the probable intent of Congress. 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.

The International Emergency Economic Powers Act, referred to in subsec. (e)(1)(B)(ii), 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.

§ 4820. Enforcement**(a) Authorities**

In order to enforce this subchapter, the Secretary, on behalf of the President, may exercise, in addition to relevant enforcement authorities of other Federal agencies, the authority to—

¹ See References in Text note below.

- (1) issue orders and guidelines;
- (2) require, inspect, and obtain books, records, and any other information from any person subject to the provisions of this subchapter;
- (3) administer oaths or affirmations and by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both;
- (4) conduct investigations within the United States and outside the United States consistent with applicable law;
- (5) inspect, search, detain, seize, or issue temporary denial orders with respect to items, in any form, that are subject to controls under this subchapter, or conveyances on which it is believed that there are items that have been, are being, or are about to be exported, reexported, or in-country transferred in violation of this subchapter, or any regulations, order, license, or other authorization issued thereunder;
- (6) carry firearms;
- (7) conduct preclearance inspections and post-shipment verifications; and
- (8) execute warrants and make arrests.

(b) Undercover investigations

(1) In general

Amounts made available to carry out this subchapter may be used by the Secretary to carry out undercover investigations that are necessary for detection and prosecution of violations of this subchapter, including to—

- (A) purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to—
 - (i) sections 1341 and 3324 of title 31;
 - (ii) section 8141 of title 40;
 - (iii) sections 3901, 6301(a) and (b)(1) to (3), and 6306 of title 41; and
 - (iv) chapter 45 of title 41; and
- (B) establish or acquire proprietary corporations or business entities as part of the undercover operation and operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31.

(2) Deposit of amounts in banks or other financial institutions

Amounts made available to carry out this subchapter that are used to carry out undercover operations under paragraph (1) may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18 and section 3302 of title 31.

(3) Offset of necessary and reasonable expenses

Any proceeds from an undercover operation carried out under paragraph (1) may be used to offset necessary and reasonable expenses incurred in such undercover operation without regard to the provisions of section 3302 of title 31.

(4) Disposition of corporations and business entities

If a corporation or business entity established or acquired as part of an undercover op-

eration carried out under paragraph (1) with a net value of over \$50,000 is to be liquidated, sold, or otherwise disposed of, the Secretary shall report the circumstances to the Comptroller General of the United States as much in advance of such disposition as the Secretary determines is practicable. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts. Any property or equipment purchased pursuant to paragraph (1) may be retained for subsequent use in undercover operations under this section. When such property or equipment is no longer needed, it shall be considered surplus and disposed of as surplus government property.

(5) Deposit of proceeds

As soon as the proceeds from an undercover operation carried out under paragraph (1), with respect to which an action is certified and carried out under this subsection, are no longer needed for the conduct of such operation, the proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Enforcement of subpoenas

In the case of contumacy by, or refusal to obey a subpoena issued to, any person under subsection (a)(3), a district court of the United States, after notice to such person and a hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, regardless of format, that are the subject of the subpoena. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Best practice guidelines

(1) In general

The Secretary, in consultation with the heads of other appropriate Federal agencies, should publish and update “best practices” guidelines to assist persons in developing and implementing, on a voluntary basis, effective export control programs in compliance with the regulations issued under this subchapter.

(2) Export compliance program

The implementation by a person of an effective export compliance program and a high quality overall export compliance effort by a person should ordinarily be given weight as mitigating factors in a civil penalty action against the person under this subchapter.

(e) Reference to enforcement

For purposes of this section, a reference to the enforcement of, or a violation of, this subchapter includes a reference to the enforcement or a violation of any regulation, order, license or other authorization issued pursuant to this subchapter.

(f) Omitted

(g) Immunity

A person shall not be excused from complying with any requirements under this section be-

cause of the person's privilege against self-incrimination, but the immunity provisions of section 6002 of title 18 shall apply with respect to any individual who specifically claims such privilege.

(h) Confidentiality of information

(1) Exemptions from disclosure

(A) In general

Information obtained under this subchapter may be withheld from disclosure only to the extent permitted by statute, except that information described in subparagraph (B) shall be withheld from public disclosure and shall not be subject to disclosure under section 552(b)(3) of title 5, unless the release of such information is determined by the Secretary to be in the national interest.

(B) Information described

Information described in this subparagraph is information submitted or obtained in connection with an application for a license or other authorization to export, reexport, or in-country transfer items or engage in other activities, a recordkeeping or reporting requirement, an enforcement activity, or other operations under this subchapter, including—

- (i) the license application, license, or other authorization itself;
- (ii) classification or advisory opinion requests, and the response thereto;
- (iii) license determinations, and information pertaining thereto;
- (iv) information or evidence obtained in the course of any investigation; and
- (v) information obtained or furnished in connection with any international agreement, treaty, or other obligation.

(2) Information to the Congress and GAO

(A) In general

Nothing in this section shall be construed as authorizing the withholding of information from the Congress or from the Government Accountability Office.

(B) Availability to the Congress

(i) In general

Any information obtained at any time under any provision of the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as in effect on the day before August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), under the Export Administration Regulations, or under this subchapter, including any report or license application required under any such provision, shall be made available to a committee or subcommittee of Congress of appropriate jurisdiction, upon the request of the chairman or ranking minority member of such committee or subcommittee.

(ii) Prohibition on further disclosure

No such committee or subcommittee, or member thereof, may disclose any information made available under clause (i),

that is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest.

(C) Availability to GAO

(i) In general

Information described in clause (i) of subparagraph (B) shall be subject to the limitations contained in section 716 of title 31.

(ii) Prohibition on further disclosure

An officer or employee of the Government Accountability Office may not disclose, except to the Congress in accordance with this paragraph, any such information that is submitted on a confidential basis or from which any individual can be identified.

(3) Information sharing

(A) In general

Any Federal official described in section 4814(a) of this title who obtains information that is relevant to the enforcement of this subchapter, including information pertaining to any investigation, shall furnish such information to each appropriate department, agency, or office with enforcement responsibilities under this section to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities.

(B) Exceptions

The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, and return information, as defined in subsection (b) of section 6103 of title 26, may be disclosed only as authorized by that section.

(C) Exchange of information

The President shall ensure that the heads of departments, agencies, and offices with enforcement authorities under this subchapter, consistent with protection of law enforcement and its sources and methods—

- (i) exchange any licensing and enforcement information with one another that is necessary to facilitate enforcement efforts under this section; and
- (ii) consult on a regular basis with one another and with the head of other departments, agencies, and offices that obtain information subject to this paragraph, in order to facilitate the exchange of such information.

(D) Information sharing with Federal agencies

Licensing or enforcement information obtained under this subchapter may be shared with departments, agencies, and offices that do not have enforcement authorities under this subchapter on a case-by-case basis.

(i) Reporting requirements

In the administration of this section, reporting requirements shall be designed to reduce the cost of reporting, recordkeeping, and docu-

mentation to the extent consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(j) Civil forfeiture

(1) In general

Any property, real or personal, tangible or intangible, seized under subsection (a) by designated officers or employees shall be subject to forfeiture to the United States in accordance with applicable law.

(2) Procedures

Any seizure or forfeiture under this subsection shall be carried out in accordance with the procedures set forth in section 981 of title 18.

(k) Rule of construction

Nothing in this subchapter¹ shall be construed to limit or otherwise affect the enforcement authorities of the Department of Homeland Security which may also complement those set forth herein.

(Pub. L. 115-232, div. A, title XVII, § 1761, Aug. 13, 2018, 132 Stat. 2226.)

Editorial Notes

CODIFICATION

Section is comprised of section 1761 of Pub. L. 115-232. Subsec. (f) of section 1761 of Pub. L. 115-232 amended section 2516 of Title 18, Crimes and Criminal Procedure.

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b)(1), (2), (d), (e), and (h), was in the original “this part”, 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 this subchapter. 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.

The Export Administration Act of 1979, referred to in subsec. (h)(2)(B)(i), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to chapter 56 (§4601 et seq.) of this title and was substantially repealed by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in subsec. (h)(2)(B)(i), 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.

This subchapter, referred to in subsec. (k), was in the original “this Act”, and was translated as 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 this subchapter, as the probable intent of Congress. 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.

§ 4821. Administrative procedure

(a) In general

Except as provided in section 4819(c)(2) or 4843(c) of this title, the functions exercised

¹ See References in Text note below.

under this subchapter shall not be subject to sections 551, 553 through 559, and 701 through 706 of title 5.

(b) Administrative law judges

(1) In general

The Secretary may—

(A) appoint administrative law judges, consistent with the provisions of section 3105 of title 5; and

(B) designate properly appointed administrative law judges from other Federal agencies who are provided to the Department of Commerce pursuant to a legally authorized interagency agreement.

(2) Limitation

An administrative law judge appointed or designated by the Secretary under paragraph (1) may preside only over proceedings of the Department of Commerce.

(c) Amendments to regulations

The President shall notify in advance the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives of any proposed amendments to the Export Administration Regulations with an explanation of the intent and rationale of such amendments.

(Pub. L. 115-232, div. A, title XVII, §1762, Aug. 13, 2018, 132 Stat. 2231.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original “this part”, 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 this subchapter. 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.

§ 4822. Review of interagency dispute resolution process

(a) In general

The President shall review and evaluate the interagency export license referral, review, and escalation processes for dual-use items and munitions under the licensing jurisdiction of the Department of Commerce or any other Federal agency, as appropriate, to determine whether current practices and procedures are consistent with established national security and foreign policy objectives.

(b) Report

Not later than 180 days after August 13, 2018, the President shall submit to the appropriate congressional committees a report that contains the results of the review carried out under subsection (a).

(c) Operating Committee for Export Policy

In any case in which the Operating Committee for Export Policy established by Executive Order 12981 (December 5, 1995; relating to Administration of Export Controls) is meeting to conduct an interagency dispute resolution relating to applications for export licenses under the Ex-