

occurred, is about to occur, or is intended to occur in connection with the item.

(f) *Possession with intent to export illegally.* No person may possess any item controlled for national security or foreign policy reasons under sections 5 or 6 of the EAA:

(1) With intent to export or reexport such item in violation of the EAA, the EAR, or any order, license or authorization issued thereunder; or

(2) With knowledge or reason to believe that the item would be so exported or reexported.

(g) *Misrepresentation and concealment of facts.* (1) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to BXA, the United States Customs Service, or an official of any other United States agency, or indirectly through any other person:

(i) In the course of an investigation or other action subject to the EAR; or

(ii) In connection with the preparation, submission, issuance, use, or maintenance of any export control document or restrictive trade practice or boycott request report, as defined in § 760.6 of the EAR; or

(iii) For the purpose of or in connection with effecting an export, reexport or other activity subject to the EAR.

(2) All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify BXA and any other relevant agency, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention has occurred or may occur in the future.

(h) *Evasion.* No person may engage in any transaction or take any other action with intent to evade the provisions of the EAA, the EAR, or any order, license or authorization issued thereunder.

(i) *Failure to comply with reporting, recordkeeping requirements.* No person may fail or refuse to comply with any

reporting or recordkeeping requirement of the EAR or of any order, license or authorization issued thereunder.

(j) *License alteration.* Except as specifically authorized in the EAR or in writing by BXA, no person may alter any license, authorization, export control document, or order issued under the EAR.

(k) *Acting contrary to the terms of a denial order.* No person may take any action that is prohibited by a denial order. See § 764.3(a)(2) of this part.

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997]

§ 764.3 Sanctions.

(a) *Administrative.*¹ Violations of the EAA, the EAR, or any order, license or authorization issued thereunder are subject to the administrative sanctions described in this section and to any other liability, sanction, or penalty available under law. The protective administrative measures that are described in § 764.6 of this part are distinct from administrative sanctions.

(1) *Civil penalty.* (i) A civil penalty not to exceed \$10,000 may be imposed for each violation, except that a civil penalty not to exceed \$100,000 may be imposed for each violation involving national security controls imposed under section 5 of the EAA.

(ii) The payment of any civil penalty may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed.

(iii) The payment of any civil penalty may be deferred or suspended in whole or in part during any probation period that may be imposed. Such deferral or suspension shall not bar the collection of the penalty if the conditions of the

¹In the event that any part of the EAR is not under the authority of the EAA, sanctions shall be limited to those provided for by such other authority, but the provisions of this part and of part 766 of the EAR shall apply insofar as not inconsistent with that other authority.

deferral, suspension, or probation are not fulfilled.

(2) *Denial of export privileges.* An order may be issued that restricts the ability of the named persons to engage in export and reexport transactions involving items subject to the EAR, or that restricts access by named persons to items subject to the EAR. An order denying export privileges may be imposed either as a sanction for a violation specified in this part or as a protective administrative measure described in §764.6(c) or (d) of this part. An order denying export privileges may suspend or revoke any or all outstanding licenses issued under the EAR to a person named in the denial order or in which such person has an interest, may deny or restrict exports and reexports by or to such person of any item subject to the EAR, and may restrict dealings in which that person may benefit from any export or reexport of such items. The standard terms of a denial order are set forth in Supplement No. 1 to this part. A non-standard denial order, narrower in scope, may be issued. Authorization to engage in actions otherwise prohibited by a denial order may be given by the Office of Exporter Services, in consultation with the Office of Export Enforcement, following application by a person named in the denial order or by a person seeking permission to deal with a named person.

(3) *Exclusion from practice.* Any person acting as an attorney, accountant, consultant, freight forwarder, or in any other representative capacity for any license application or other matter before BXA may be excluded by order from any or all such activities before BXA.

(b) *Criminal.*² (1) *General.* Except as provided in paragraph (b)(2) of this sec-

²In the event that any part of the EAR is not under the authority of the EAA, sanctions shall be limited to those provided for by such other authority or by 18 U.S.C. 3571, a criminal code provision that establishes a maximum criminal fine for a felony that is the greater of the amount provided by the statute that was violated, or an amount not more than \$500,000 for an organization. The Federal Sentencing Guidelines found in §2M5.1 of Appendix 4 to Title 18 of the United States Code apply, to the extent followed by

tion, whoever knowingly violates or conspires to or attempts to violate the EAA, EAR, or any order or license issued thereunder, shall be fined not more than five times the value of the exports or reexports involved or \$50,000, whichever is greater, or imprisoned not more than five years, or both.

(2) *Willful violations.* (i) Whoever willfully violates or conspires to or attempts to violate any provision of the EAA, the EAR, or any order or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of items involved is, any controlled country or any country to which exports or reexports are controlled for foreign policy purposes, except in the case of an individual, shall be fined not more than five times the value of the export or reexport involved or \$1,000,000, whichever is greater; and, in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 10 years, or both.

(ii) Any person who is issued a license under the EAA or the EAR for the export or reexport of any items to a controlled country and who, with knowledge that such export or reexport is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, except in the case of an individual, shall be fined not more than five times the value of the exports or reexports involved or \$1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than five years or both.

(iii) Any person who possesses any item with the intent to export or reexport such item in violation of an export control imposed under sections 5 or 6 of the EAA, the EAR, or any order or license issued thereunder, or knowing or having reason to believe that the item would be so exported or reexported, shall, in the case of a violation of an export control imposed under section 5 of the EAA (or the EAR, or any order

the court, to sentencing for convictions for violating the EAA.

or license issued thereunder with respect to such control), be subject to the penalties set forth in paragraph (b)(2)(i) of this section and shall in the case of a violation of an export control imposed under section 6 of the EAA (or the EAR, or any order or license issued thereunder with respect to such control), be subject to the penalties set forth in paragraph (b)(1) of this section.

(iv) Any person who takes any action with intent to evade the provisions of the EAA, the EAR, or any order or license issued thereunder, shall be subject to the penalties set forth in paragraph (b)(1) of this section, except that in the case of an evasion of an export control imposed under sections 5 or 6 of the EAA (or the EAR, or any order or license issued thereunder with respect to such control), such person shall be subject to the penalties set forth in paragraph (b)(2)(i) of this section.

(3) *Other criminal sanctions.* Conduct that constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, or that occurs in connection with such a violation, may also be prosecuted under other provisions of law, including 18 U.S.C. 371 (conspiracy), 18 U.S.C. 1001 (false statements), 18 U.S.C. 1341, 1343, and 1346 (mail and wire fraud), and 18 U.S.C. 1956 and 1957 (money laundering).

(c) *Other sanctions.* Conduct that violates the EAA, the EAR, or any order, license or authorization issued thereunder, and other conduct specified in the EAA may be subject to sanctions or other measures in addition to criminal and administrative sanctions under the EAA or EAR. These include, but are not limited to, the following:

(1) *Statutory sanctions.* Statutorily-mandated sanctions may be imposed on account of specified conduct related to weapons proliferation. Such statutory sanctions are not civil or criminal penalties, but restrict imports and procurement (See section 11A of the EAA, Multilateral Export Control Violations, and section 11C of the EAA, Chemical and Biological Weapons Proliferation), or restrict export licenses (See section 11B of the EAA, Missile Proliferation Violations, and the Iran-Iraq Arms Non-Proliferation Act of 1992).

(2) *Other sanctions and measures—(i) Seizure and forfeiture.* Items that have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the EAA, the EAR, or any order, license or authorization issued thereunder, are subject to being seized and detained as are the vessels, vehicles, and aircraft carrying such items. Seized items are subject to forfeiture. (50 U.S.C. app. 2411(g); 22 U.S.C. 401.)

(ii) *Cross-debarment.* (A) The Department of State may deny licenses or approvals for the export or reexport of defense articles and defense services controlled under the Arms Export Control Act to persons indicted or convicted of specified criminal offenses, including violations of the EAA, or to persons denied export privileges by BXA or another agency. (22 CFR 126.7(a) and 127.11(a).)

(B) The Department of Defense, among other agencies, may suspend the right of any person to contract with the United States Government based on export control violations. (Federal Acquisition Regulations 9.407-2.)

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997]

§ 764.4 Reporting of violations.

(a) *Where to report.* If a person learns that an export control violation of the EAR has occurred or may occur, that person may notify:

Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-4520, Washington, D.C. 20230, Tel: (202) 482-1208, Facsimile: (202) 482-0964

or, for violations of part 760 of the EAR:

Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-6099C, Washington, D.C. 20230, Tel: (202) 482-2381, Facsimile: (202) 482-0913.

(b) *Failure to report violations.* Failure to report potential violations may result in the unwarranted issuance of licenses or exports without the required licenses to the detriment of the interests of the United States.