

§719.2

§719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.

(a) *Violations. (1) Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the Act.

(2) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(i) To establish or maintain any record required by the Act or this subchapter; or

(ii) To submit any report, notice, or other information to the United States Government in accordance with the Act or this subchapter; or

(iii) To permit access to or copying of any record that is exempt from disclosure under the Act or this subchapter.

(b) *Civil penalties. (1) Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have disrupted, delayed or otherwise impeded an authorized inspection, as set forth in paragraph (a)(1) of this section, shall pay a civil penalty in an amount not to exceed \$25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record or submit any report, notice, or other information required by the Act or this subchapter, or to permit access to or copying of any record exempt from disclosure under the Act or this subchapter as set forth in paragraph (a)(2) of this section, shall pay a civil penalty in an amount not to exceed \$5,000 for each violation.

(c) *Criminal penalty.* Any person that knowingly violates the Act by willfully failing or refusing to permit entry or inspection authorized by the Act; or by willfully disrupting, delaying or otherwise impeding an inspection authorized by the Act; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any

15 CFR Ch. VII (1-1-04 Edition)

record exempt from disclosure under the Act or CWCR, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than one year, or both.

(d) *Denial of export privileges.* Any person in the United States or any U.S. national may be subject to a denial of export privileges after notice and opportunity for hearing pursuant to part 720 of this subchapter if that person has been convicted under Title 18, section 229 of the United States Code.

§719.3 Violations of the IEEPA subject to judicial enforcement proceedings.

(a) *Violations. (1) Import restrictions involving Schedule 1 chemicals.* Except as otherwise provided in §712.1 of this subchapter, no person may import any Schedule 1 chemical (See Supplement No. 1 to part 712 of this subchapter) unless:

(i) The import is from a State Party;

(ii) The import is for research, medical, pharmaceutical, or protective purposes;

(iii) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(iv) The importing person has notified the Department of Commerce 45 calendar days prior to the import pursuant to §712.4 of this subchapter.

(2) *Import restrictions involving Schedule 2 chemicals.* Except as otherwise provided in §713.1 of this subchapter, no person may, on or after April 29, 2000, import any Schedule 2 chemical (see Supplement No. 1 to part 713 of this subchapter) from any destination other than a State Party.

(b) *Civil penalty.* A civil penalty not to exceed \$11,000 may be imposed in accordance with this part on any person for each violation of this section.¹

(c) *Criminal penalty.* Whoever willfully violates paragraph (a)(1) or (2) of this section shall, upon conviction, be fined not more than \$50,000, or, if a natural person, imprisoned for not more

¹The maximum civil penalty allowed under the International Emergency Economic Powers Act is \$11,000 for any violation committed on or after October 23, 1996 (15 CFR 6.4(a)(3)).

than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by like fine, imprisonment, or both.²

§ 719.4 Violations and sanctions under the Act not subject to proceedings under this subchapter.

(a) *Criminal penalties for development or use of a chemical weapon.* Any person who violates 18 U.S.C. 229 shall be fined, or imprisoned for any term of years, or both. Any person who violates 18 U.S.C. 299 and by whose action the death of another person is the result shall be punished by death or imprisoned for life.

(b) *Civil penalty for development or use of a chemical weapon.* The Attorney General may bring a civil action in the appropriate United States district court against any person who violates 18 U.S.C. 229 and, upon proof of such violation by a preponderance of the evidence, such person shall be subject to pay a civil penalty in an amount not to exceed \$100,000 for each such violation.

(c) *Criminal forfeiture.* (1) Any person convicted under section 229A(a) of Title 18 of the United States Code shall forfeit to the United States irrespective of any provision of State law:

(i) Any property, real or personal, owned, possessed, or used by a person involved in the offense;

(ii) Any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

(iii) Any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) In lieu of a fine otherwise authorized by section 229A(a) of Title 18 of the United States Code, a defendant who derived profits or other proceeds from an offense may be fined not more than

twice the gross profits or other proceeds.

(d) *Injunction.* (1) The United States may, in a civil action, obtain an injunction against:

(i) The conduct prohibited under section 229 or 229C of Title 18 of the United States Code; or

(ii) The preparation or solicitation to engage in conduct prohibited under section 229 or 229D of Title 18 of the United States Code.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or 405 of the Act, or compel the taking of any action required by or under the Act or the Convention.

§ 719.5 Initiation of administrative proceedings.

(a) *Request for Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Industry and Security, may request that the Secretary of State initiate an administrative enforcement proceeding under this § 719.5 and 22 CFR 103.7. If the request is in accordance with applicable law, the Secretary of State will initiate an administrative enforcement proceeding by issuing a NOVA. The Office of Chief Counsel shall serve the NOVA as directed by the Secretary of State.

(b) *Letter of intent to charge.* The Director of the Office of Export Enforcement, Bureau of Industry and Security, may notify a respondent by letter of the intent to charge. This letter of intent to charge will advise a respondent that the Department of Commerce has conducted an investigation and intends to recommend that the Secretary of State issue a NOVA. The letter of intent to charge will be accompanied by a draft NOVA and proposed order, and will give the respondent a specified period of time to contact BIS to discuss settlement of the allegations set forth in the draft NOVA. An administrative enforcement proceeding is not initiated by a letter of intent to charge. If the respondent does not contact BIS within the specified time, or if the respondent requests it, BIS will make its request for initiation of an administrative enforcement proceeding to the Secretary

²Alternatively, sanctions may be imposed under 18 U.S.C. 3571, a criminal code provision that establishes a maximum criminal fine for a felony that is the greatest of: (1) the amount provided by the statute that was violated; (2) an amount not more than \$250,000 for an individual, or not more than \$500,000 for an organization; or (3) an amount based on gain or loss from the offense.