

(A) does not comply with the minimum standards for the elimination of trafficking; and

(B) is not making significant efforts to bring itself into compliance, as described in subsection (b)(1)(C) of this section.

(d) Presidential determinations

The determinations referred to in subsection (c) of this section are the following:

(1) Withholding of nonhumanitarian, nontrade-related assistance

The President has determined that—

(A)(i) the United States will not provide nonhumanitarian, nontrade-related foreign assistance to the government of the country for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; or

(ii) in the case of a country whose government received no nonhumanitarian, nontrade-related foreign assistance from the United States during the previous fiscal year, the United States will not provide funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; and

(B) the President will instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use the Executive Director's best efforts to deny, any loan or other utilization of the funds of the respective institution to that country (other than for humanitarian assistance, for trade-related assistance, or for development assistance which directly addresses basic human needs, is not administered by the government of the sanctioned country, and confers no benefit to that government) for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance.

(2) Ongoing, multiple, broad-based restrictions on assistance in response to human rights violations

The President has determined that such country is already subject to multiple, broad-based restrictions on assistance imposed in significant part in response to human rights abuses and such restrictions are ongoing and are comparable to the restrictions provided in paragraph (1). Such determination shall be accompanied by a description of the specific restriction or restrictions that were the basis for making such determination.

(3) Subsequent compliance

The Secretary of State has determined that the government of the country has come into compliance with the minimum standards or is making significant efforts to bring itself into compliance.

(4) Continuation of assistance in the national interest

Notwithstanding the failure of the government of the country to comply with minimum standards for the elimination of trafficking and to make significant efforts to bring itself into compliance, the President has determined that the provision to the country of nonhumanitarian, nontrade-related foreign assistance, or the multilateral assistance described in paragraph (1)(B), or both, would promote the purposes of this division or is otherwise in the national interest of the United States.

(5) Exercise of waiver authority

(A) In general

The President may exercise the authority under paragraph (4) with respect to—

- (i) all nonhumanitarian, nontrade-related foreign assistance to a country;
- (ii) all multilateral assistance described in paragraph (1)(B) to a country; or
- (iii) one or more programs, projects, or activities of such assistance.

(B) Avoidance of significant adverse effects

The President shall exercise the authority under paragraph (4) when necessary to avoid significant adverse effects on vulnerable populations, including women and children.

(6) Definition of multilateral development bank

In this subsection, the term “multilateral development bank” refers to any of the following institutions: the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, the African Development Fund, the European Bank for Reconstruction and Development, and the Multilateral Investment Guaranty Agency.

(e) Certification

Together with any notification under subsection (c) of this section, the President shall provide a certification by the Secretary of State that, with respect to any assistance described in clause (ii), (iii), or (v) of section 7102(7)(A) of this title, or with respect to any assistance described in section 7102(7)(B) of this title, no assistance is intended to be received or used by any agency or official who has participated in, facilitated, or condoned a severe form of trafficking in persons.

(Pub. L. 106-386, div. A, §110, Oct. 28, 2000, 114 Stat. 1482.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7103, 7110 of this title.

§ 7108. Actions against significant traffickers in persons

(a) Authority to sanction significant traffickers in persons

(1) In general

The President may exercise the authorities set forth in section 1702 of title 50 without re-

gard to section 1701 of title 50 in the case of any of the following persons:

(A) Any foreign person that plays a significant role in a severe form of trafficking in persons, directly or indirectly in the United States.

(B) Foreign persons that materially assist in, or provide financial or technological support for or to, or provide goods or services in support of, activities of a significant foreign trafficker in persons identified pursuant to subparagraph (A).

(C) Foreign persons that are owned, controlled, or directed by, or acting for or on behalf of, a significant foreign trafficker identified pursuant to subparagraph (A).

(2) Penalties

The penalties set forth in section 1705 of title 50 apply to violations of any license, order, or regulation issued under this section.

(b) Report to Congress on identification and sanctioning of significant traffickers in persons

(1) In general

Upon exercising the authority of subsection (a) of this section, the President shall report to the appropriate congressional committees—

(A) identifying publicly the foreign persons that the President determines are appropriate for sanctions pursuant to this section and the basis for such determination; and

(B) detailing publicly the sanctions imposed pursuant to this section.

(2) Removal of sanctions

Upon suspending or terminating any action imposed under the authority of subsection (a) of this section, the President shall report to the committees described in paragraph (1) on such suspension or termination.

(3) Submission of classified information

Reports submitted under this subsection may include an annex with classified information regarding the basis for the determination made by the President under paragraph (1)(A).

(c) Law enforcement and intelligence activities not affected

Nothing in this section prohibits or otherwise limits the authorized law enforcement or intelligence activities of the United States, or the law enforcement activities of any State or subdivision thereof.

(d) Omitted

(e) Implementation

(1) Delegation of authority

The President may delegate any authority granted by this section, including the authority to designate foreign persons under paragraphs (1)(B) and (1)(C) of subsection (a) of this section.

(2) Promulgation of rules and regulations

The head of any agency, including the Secretary of Treasury, is authorized to take such actions as may be necessary to carry out any authority delegated by the President pursuant

to paragraph (1), including promulgating rules and regulations.

(3) Opportunity for review

Such rules and regulations shall include procedures affording an opportunity for a person to be heard in an expeditious manner, either in person or through a representative, for the purpose of seeking changes to or termination of any determination, order, designation or other action associated with the exercise of the authority in subsection (a) of this section.

(f) Definition of foreign persons

In this section, the term “foreign person” means any citizen or national of a foreign state or any entity not organized under the laws of the United States, including a foreign government official, but does not include a foreign state.

(g) Construction

Nothing in this section shall be construed as precluding judicial review of the exercise of the authority described in subsection (a) of this section.

(Pub. L. 106-386, div. A, §111, Oct. 28, 2000, 114 Stat. 1484.)

CODIFICATION

Section is comprised of section 111 of Pub. L. 106-386. Subsec. (d) of section 111 of Pub. L. 106-386 amended section 1182 of Title 8, Aliens and Nationality.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 8 section 1182.

§ 7109. Strengthening prosecution and punishment of traffickers

(a) Omitted

(b) Amendment to the Sentencing Guidelines

(1) Pursuant to its authority under section 994 of title 28 and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of offenses involving the trafficking of persons including component or related crimes of peonage, involuntary servitude, slave trade offenses, and possession, transfer or sale of false immigration documents in furtherance of trafficking, and the Fair Labor Standards Act [29 U.S.C. 201 et seq.] and the Migrant and Seasonal Agricultural Worker Protection Act [29 U.S.C. 1801 et seq.].

(2) In carrying out this subsection, the Sentencing Commission shall—

(A) take all appropriate measures to ensure that these sentencing guidelines and policy statements applicable to the offenses described in paragraph (1) of this subsection are sufficiently stringent to deter and adequately reflect the heinous nature of such offenses;

(B) consider conforming the sentencing guidelines applicable to offenses involving trafficking in persons to the guidelines applicable to peonage, involuntary servitude, and slave trade offenses; and

(C) consider providing sentencing enhancements for those convicted of the offenses described in paragraph (1) of this subsection that—