

SECTION-BY-SECTION ANALYSIS THE EXPORT ENFORCEMENT ACT OF 2007

This proposed Export Enforcement Act of 2007 represents a significant step toward strengthening the U.S. dual-use export control enforcement system. The Export Administration Act of 1979 (EAA), in lapse since 2001, has been the basis of the existing U.S. dual-use export control system, but because of the intermittent lapses in the EAA, it has not been updated to reflect current enforcement trends or to provide the necessary incentives for compliance that would effectively address today's national security export control needs.

The following presents a section-by-section analysis of this Act and certain amendments made to the lapsed EAA of 1979.

Section 1 - Short Title

This section states that the short title of the legislation is the "Export Enforcement Act of 2007".

Section 2 - National Security Controls (Amendment to Section 5) (50 U.S.C. App. § 2404)

Section 5 is amended to strike the former title of the "Under Secretary of Commerce for Export Administration" and insert the new title of "Under Secretary of Commerce for Industry and Security".

Section 3 - Violations (Amendment to Section 11) (50 U.S.C. App. § 2410)

Section 11 is amended to increase the criminal and civil penalty amounts under the EAA. The criminal penalty amounts have been increased to \$1,000,000 per violation and/or imprisonment for not more than 10 years, for each violation by an individual, and \$5,000,000 or up to 10 times the value of the exports involved, whichever is greater, per violation by a person other than an individual. The civil penalty amounts have been increased to \$500,000 for each violation of the EAA or any regulation, license, or order issued under the EAA. The increased penalty amounts are commensurate with comparable statutes and will provide an enhanced deterrent effect.

Section 11 is also amended by expanding the list of statutes, the violation of which could result in the denial of export privileges for a period not to exceed 25 years. In addition, a new provision is added to section 11 to toll the statute of limitations for purposes of civil and administrative proceedings during criminal prosecution.

Section 4 - Enforcement (Amendments to Section 12) (50 U.S.C. App. § 2411)

Section 12 is amended to include provisions of permanent and enhanced law enforcement authority for Office of Export Enforcement (OEE) Special Agents. These amendments to section 12 (coupled with amendments to section 20) ensure that OEE Special Agents will continue to have law enforcement authority even when the EAA is in lapse and will not need to rely on being deputized by the U.S. Marshals Service, as currently occurs.

Section 12 is amended to make clear that the Departments of Commerce and Homeland Security may conduct overseas investigations of violations of the EAA. Section 12 is also amended to provide a means through which the Department of Commerce may fund its undercover investigative operations, and to include the EAA and the International Emergency Economic Powers Act as statutes under which wiretap authority may be executed. Overseas investigative authority is needed to combat today's increasingly complex international proliferation activities. Undercover and wiretap authorities are essential to the effective enforcement of export controls and related laws, and greatly enhance the ability of the Departments of Commerce and Homeland Security, in addition to other federal agencies authorized to enforce the Act, to effectively and efficiently investigate export control violations. Agencies involved in the enforcement of this EAA will coordinate, as appropriate, in the execution of enforcement authorities set forth in the EAA. This coordination would include, as necessary, review and modification of existing agreements and negotiation of any new agreements to ensure effective interagency enforcement of the EAA.

Section 5 - Administrative Procedure and Judicial Review (Amendment to section 13) (50 U.S.C. App. § 2412)

Section 13 is amended to provide that the exemption in the EAA from certain provisions of the Administrative Procedure Act, including the preclusion from judicial review, shall remain in effect during lapses of the EAA. The language of this proposal follows the language that would amend section 12(c) of the EAA to clearly protect the confidentiality of export control information during lapses.

Section 6 - Administrative and Regulatory Authority (Amendment to Section 15) (50 U.S.C. App. § 2414)

Section 15 is amended to clarify that the Under Secretary of Commerce for Industry and Security is authorized to be delegated not only the authorities set forth in the EAA, but also other authorities delegated by, or that may be delegated by, the Secretary of Commerce to the Under Secretary for Industry and Security, or any predecessor or successor.

Section 7 – Authorization of Appropriations (Amendment to Section 18) (50 U.S.C. App. §2417)

Section 18 is amended to remove outdated authorization language that existed in the current EAA, and to authorize the appropriation of sums necessary to carry out the purposes of this Act for fiscal years 2007, 2008, 2009, 2010, and 2011.

Section 8 – Termination Date (Amendment to Section 20) 50 U.S.C. App. § 2419)

Section 20 is amended to reflect the new EAA termination date of five years from the date of enactment. The amended language also provides that the provisions of sections 11 and 12 (maintained in effect pursuant to the International Emergency Economic Powers Act (IEEPA) authority during times when the EAA is in lapse) do not terminate.

Section 9 - Technical and Conforming Amendments

This section reflects conforming and technical amendments that are made to other statutes that are affected by the provisions in this Act.

Amendment (1) - Section 2516(1) of Title 18, United States Code, authorizes officials of the Department of Justice to obtain an order from a federal judge authorizing or approving the interception of wire or oral communications when such interception may provide or has provided evidence of a violation of, or conspiracy to violate, certain laws that the statute enumerates. This section has been amended to add a paragraph referencing the EAA and the IEEPA as statutes for which such authorization may be appropriate for enforcement purposes.

Amendment (2) - Section 5314 of Title 5, United States Code, is being amended to conform the title of the Under Secretary for Industry and Security with the new name of the Bureau of Industry and Security (BIS), formerly called the Bureau of Export Administration (BXA). In 2002, the Department of Commerce changed the name of BXA to BIS because the new name more accurately reflected the breadth of the Bureau's activities in the areas of national and economic security. This name change was implemented through the publication of a final rule in the *Federal Register* on April 26, 2002.

Amendment (3) - Section 4 of this Act (adding section 12(h) to the EAA) authorizes BIS to expend funds transferred to, paid to, received by, or made available to BIS as a reimbursement in accordance with section 9703 of Title 31, United States Code "the Department of the Treasury Forfeiture Fund". This amendment makes conforming changes to section 9703 to make clear that BIS is a member of that fund. An entity may only be added to the Treasury Fund by amendment to the statute.

Amendment (4) - Section 983 of Title 18, United States Code, "General rules for civil forfeiture proceedings", is amended to add the EAA to the list of statutes excluded from the definition of a "civil forfeiture statute" under the Civil Asset Forfeiture Reform Act (CAFRA). The CAFRA created general rules relating to federal civil forfeiture proceedings designed to increase the due process safeguards for property owners whose property has been seized. All civil forfeiture proceedings, unless explicitly exempted, are covered by CAFRA. The following civil forfeiture statutes are exempted from CAFRA: the Tariff Act of 1930 or any other provision of law codified in Title 19 (Customs authority); the Internal Revenue Code of 1986; the Federal Food, Drug, and Cosmetic Act; the Trading with the Enemy Act; the International Emergency Economic Powers Act; and section 1 of title VI of the Act of June 15, 1917. This amendment adds the EAA to these exempted statutes.

Amendment (5) - The EAA contains a long-standing clerical error in section 11A (Multilateral Export Control Violations) in paragraph k of that section. Paragraph k contains misnumbered subparagraphs 1 and 3, with no paragraph 2. This amendment redesignates subparagraph 3 of section 11A(k) to subparagraph 2, and amends the text of that subparagraph by striking reference to paragraph (2) and inserting paragraph (1).

Amendment (6) - The Arms Export Control Act references sections of the EAA of 1979 that will be amended or renumbered by this Act. This amendment makes the technical corrections to the Arms Export Control Act to properly refer to the revised sections of the EAA.

Amendment (7) - Section 1595a(d) of the Tariff Act of 1930 (19 U.S.C. § 1595a) includes forfeiture provisions related to the seizure of merchandise that has been unlawfully exported, or attempted to be exported, contrary to U.S. law. This amendment would add a monetary penalty of \$2500 or the value of the articles exported or to be exported, whichever is greater, that would be imposed on persons violating that section.