

Bush Administration Proposes Export Enforcement Act of 2007

On April 24, 2007, the Bush Administration announced that it had proposed legislation that would revise and strengthen the enforcement provisions of the Export Administration Act (EAA). The EAA, originally enacted in 1979 (50 U.S.C. App. § § 2401-2420), sets forth the regulations controlling exports of "dual-use" (commercial) products as regulated by the Commerce Department. Congress has not renewed the EAA since it expired on August 20, 2001. In the absence of the EAA, the President has used his emergency powers under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. § 1701-1706) to issue executive orders regulating dual-use items.

According to U.S. Commerce Secretary Carlos M. Gutierrez, the purpose of the Export Enforcement Act of 2007 (the Act) is to renew the Commerce Department's authority to administer the dual-use export control system while Commerce works with Congress on "long-term fundamental reform to reflect the national security and economic challenges of the 21st Century."

The Act would substantially increase EAA penalties. For example, the corporate criminal penalties would increase from \$50,000 under the current IEEPA executive order (which was originally \$1,000,000 or five times the value of exports involved under the expired EAA) to the greater of \$5 million or ten times the value of the exports involved. Similarly, the civil penalties would increase from \$50,000 per violation to \$500,000 per violation. Even if the exporter receives the 50 percent mitigation for a voluntary disclosure, the new penalties will still result in significant payments under the Act.

In addition, the Act would: (1) renew the now lapsed EAA of 1979 for five years; (2) provide the Commerce Department's special agents with undercover authority as well as overseas investigative authority; (3) expand the list of criminal violations on which Commerce can base the denial of export privileges; and (4) make permanent provisions protecting confidential business information, and other information, protected by the EAA.

Many observers believe, however, that Congress is unlikely to pass the Act. According to Bill Reinsch, President of the National Foreign Trade Council, the Act is generally not supported by the business community. For example, the National Foreign Trade Council is concerned that the five-year bill could attract amendments making it tougher for companies to export certain dual-use goods at a time when many businesses already feel that the current export regulations are too restrictive.

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