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Export Violations

Increased Penalties for Export Violations: What are they and how will BIS enforce them?

On October 16, 2007, President Bush signed into law the International Emergency Economic Powers (IEEPA) Enhancement Act, [P.L. No. 110-96](#), which amends Section 206 of IEEPA. Specifically, the Act enhances administrative and criminal penalties that can be imposed under IEEPA for administrative enforcement actions pending or commenced on or after October 16, 2007.

The increased penalties, applicable to any liable person, could be as much as \$250,000 or an amount that is twice the amount of the violating transaction for which penalties are being leveled. Civil penalties may be imposed for each violation of IEEPA. A person who commits, tries to commit, or helps to commit a criminal act under IEEPA may be subject to a maximum fine of \$1 million or imprisonment for up to 20 years, or both. Criminal liability is provided for anyone who "willfully conspires to commit, or aids or abets in the commission of" an unlawful act described in the statute.

In light of the fact that the new civil penalties apply to enforcement actions that were pending as of October 16, 2007, the Bureau of Industry and Security (BIS) yesterday issued [guidance](#) concerning how the enhanced IEEPA penalties will be applied. BIS has outlined five circumstances where it will generally not pursue enhanced penalties as provided for under the IEEPA Enhancement Act. Those circumstances include:

(1) Violations with respect to which a valid Voluntary Self-Disclosure (VDS) was

submitted to BIS in accordance with Parts 764.5(c)(2) and 764.8(c)(2) of the EAR prior to October 16, 2007;

(2) Violations with respect to which BIS filed charging letters with an Administrative Law Judge (ALJ) prior to October 16, 2007;

(3) Violations with respect to which BIS has approved settlement offers or has issued settlement offers prior to October 16, 2007, if settlement was reached prior to BIS filing a charging letter with an ALJ;

(4) Violations with respect to which BIS issued proposed charging letters prior to October 16, 2007, if settlement was reached prior to BIS filing a charging letter with an ALJ; and

(5) Violations with respect to which the parties have executed a statute of limitations waiver prior to October 16, 2007, regardless of whether a proposed charging letter has been issued, and settlement is reached prior to BIS filing a charging letter with an ALJ.

Generally, it appears that BIS will apply the new civil penalties to enforcement actions that were pending (those actions where a Final Order has not been signed) or commenced on or after October 16, 2007. The new criminal penalties do not have a retroactive provision and will only be applied to enforcement actions commenced on or after October 16, 2007.

U.S. exporters should make note that in addition to enhanced penalties, the IEEPA Enhancement Act of 2007 amended Section 206(a) of the statute to clarify that civil penalties may now be assessed against those who conspire to violate, or cause a violation of any license, order, regulation, or prohibition of title 50 of the United States Code.

Prior to these amendments, section 206 of IEEPA was last revised on March 9, 2006, pursuant to the USA Patriot Act Improvement and Reauthorization Act of 2005, where civil penalties were increased from \$11,000 to \$50,000, and for criminal

violations, to increase from 10 to 20 years, the maximum jail time violators could be given. This amendment only applied to violations which occurred after March 9, 2006. BIS officials have recently stated that the increased penalties which took effect on October 16, 2007 are still not enough. As a result, BIS plans to continue pursuing increased penalties through Congressional introduction and passage of the Export Enforcement Act of 2007. BIS announced proposed legislation earlier this year. Additional information on the proposed penalties may be obtained [here](#).

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