

Written Statement Submitted by the Bureau of Industry and Security
Department of Commerce
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“North American Energy Infrastructure Act” Hearing
Subcommittee on Energy and Power
Committee on Energy and Commerce
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The Bureau of Industry and Security of the U.S. Department of Commerce is responsible for administering and enforcing controls on the export of a wide range of items, including crude oil. The Bureau is also responsible for domestic implementation of certain nonproliferation treaties, carrying out a number of defense industrial base activities, and administering and enforcing the law and regulations prohibiting the participation of U.S. persons in unsanctioned foreign boycotts.

Laws

U.S. export controls on crude oil are based on several laws. The primary statute relating to oil exports is the Energy Policy and Conservation Act of 1975 (EPCA). EPCA directs the President to restrict the export of crude oil produced in the United States. Responsibility for implementation of the Act’s export provisions was delegated to the Secretary of Commerce.

Other statutes place further specific restrictions on exports of crude oil transported on pipelines that received federal rights of way (Mineral Lands Leasing Act (MLA)); of oil produced on the outer continental shelf (Outer Continental Shelf Lands Act); or oil produced from the Naval Petroleum Reserve (Naval Petroleum Reserves Production Act). There are other statutes and findings that permit certain types of oil exports, including when it is shipped over the Trans Alaska Pipeline (TAPS) (Exports of Alaskan North Slope Oil); if it is of foreign origin; or is from the Strategic Petroleum Reserve.

Implementing Regulations

The Bureau of Industry and Security’s Export Administration Regulations (EAR) codify the requirements and provisions of these various statutes. In particular, Section 754.2 of the EAR controls for reasons of short supply the export of crude oil, including reconstituted crude petroleum, tar sands and crude shale oil. Part 754 also imposes short supply controls on the export of certain petroleum products, natural gas liquids and derivatives that were produced or derived from the Naval Petroleum Reserve.

As set forth in Section 754.2, a license is required for the export of crude oil to all destinations, including Canada, with a few limited exceptions. The export licensing policy described in Section 754.2 is to approve crude oil exports if the exports are consistent with the specific statutory requirements pertinent to that export. The President is also authorized by the EPCA to exempt the prohibition on exports as long as the exemptions are consistent with the national interest and the need to leave oil supplies uninterrupted or unimpaired.

The following kinds of transactions will be generally approved: Exports from Alaska's Cook Inlet (not transported over TAPS or MLA, based on a presidential finding of 1985); exports to Canada for consumption or use therein (based on presidential findings of 1985 and 1988); exports in connection with refining or exchange of strategic petroleum reserve oil; exports that are consistent with international energy supply agreements; exports of foreign-origin crude ; exports of California Heavy crude up to 25 million barrels per day (based on presidential finding of 1992); temporary exports or exchanges. Exports of oil not meeting these criteria will be considered on a case-by-case basis, and will generally be approved if BIS determines that the proposed export is consistent with the national security interests and the purposes of the EPCA.

Other exports of U.S.-origin crude oil will generally be approved as in the national interest and consistent with the purposes of EPCA if the export is part of an overall transaction that: 1) will result in the importation into the United States of an equal or greater quantity of and equal or better quality of crude oil or refined petroleum products; 2) is made under a contract that may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened; and 3) for which the applicant can demonstrate that for compelling economic or technological reasons cannot be reasonably marketed in the United States.

The following exceptions to the license requirements correspond to the provisions of the laws and regulations identified above. These exceptions are: SPR – Shipments from the Strategic Petroleum Reserve; TAPS – Shipments on the TransAlaska Pipeline; and SS - Sample shipments.

Licensing Data

BIS has issued an increasing number of licenses for exports of crude oil in recent years. Most of the license applications BIS has received and approved in recent years are for exports of oil for consumption and use in Canada. Most of the other licenses authorized exports of foreign-origin oil.

In Fiscal Year 2011, BIS issued 45 licenses, of which 39 were for exports to Canada. In Fiscal Year 2012, BIS issued 66 licenses, of which 62 were for exports to Canada. Exporters apply for licenses to ship crude oil for consumption or use in Canada based on a number of factors, including refinery availability and transportation costs.

North American Energy Infrastructure Act

The North American Energy Infrastructure Act would require the Secretary of Commerce to review requests to construct or operate an oil pipeline within 120 days of a request and approve such a request unless the project is not in the national security interests of the United States. This is a significant change from current policy for the permitting of cross-border projects and would unnecessarily limit the ability for the Executive Branch to make reasoned and responsible decisions. The Act would also eliminate environmental assessments that would be required for such projects by the National Environmental Policy Act of 1969. It is the Administration's view that eliminating the National Environmental Policy Act (NEPA) compliance for projects will undermine the reasoned consideration of the environmental effects of such projects and impede the opportunity to consider alternatives with less adverse impacts on communities and the environment.

As noted above, the Commerce Department's Bureau of Industry and Security has experience in administering controls on the export of crude oil consistent with existing statutory requirements. However, the Department of Commerce has never operated under the framework that would be created by the North American Energy Infrastructure Act. The Department is continuing to review the draft legislation, but the Administration has serious concerns, as outlined above. If the Committee has any further questions, we would be pleased to respond.