

H.R. 5040 -- Export Control Reform Act of 2018
Section-By-Section

Summary: House Foreign Affairs Committee Chairman Royce and Ranking Member Engel are sponsoring bipartisan export control reform legislation that will establish a permanent statutory basis for the control of commercial and some military items licensed by the Department of Commerce, and repeal the Cold War-era Export Administration Act of 1979 (EAA). The old EAA was last rewritten in 1979 lapsed in 2001. Since then, emergency Presidential authority has been used to keep the Commerce Department’s export control regulations in effect.

Title I – Authority and Administration of Export Controls. This title requires the President to establish controls over the export of certain “dual-use” and military items in order to advance the foreign policy and national security of the United States. The administration of those controls would be delegated to the Secretary of Commerce, Secretary of Defense, Secretary of State, the Director of National Intelligences, and other appropriate Federal agencies. Subject to interagency review, the Department of Commerce would be delegated with authority to issue licenses and other authorization for exports. Consistent with existing law, this title provides authority to impose criminal and civil penalties for export control violations. It also provides robust authority to enforce such controls, including the ability to stop unapproved transfers. The title establishes strong Congressional oversight of these controls. The title also repeals the EAA and includes transition provisions to ensure that rules and regulations established under the EAA, or otherwise enforced through emergency decree, shall remain in effect unless changed or revoked under the new authority established by this title.

Section 101. Short Title. This section establishes the short title for the bill as the “Export Control Reform Act of 2018.”

Section 102. Statement of Policy. This section describes the purposes of U.S. export controls authorized by this Act.

Section 103. Authority of the President. This section requires that the President establish controls over the export, reexport, and transfer of “dual-use” and certain military items, as well as establish controls over discrete activities relating to the proliferation of weapons of mass destruction and their means of delivery.

Section 104. Additional Authorities. Section 104(a) requires the President to establish lists of controlled items, as well as lists of foreign persons and end-uses determined to be a threat to the United States. Section 104(a) also states that the President shall:

- prohibit or restrict certain exports;
- require licenses or other authorization for exports of controlled items and create, as appropriate, exceptions to licensing requirements;
- establish measures for compliance, information gathering, and the prevention of unauthorized exports;
- keep the public fully informed of changes in policy and appoint technical advisory committees; and

- undertake any other action necessary to implement this authority not otherwise prohibited by law.

Section 104(b) states that the authority under this title may not be used to regulate any postal, telegraphic, telephonic, or other personal communication that does not involve a transfer of anything of value.

Section 104(c) strengthens Congressional oversight over rescission of a country's designation as a State Sponsor of Terrorism. This section would increase the period of time the Congress would have to review any such proposed rescission (from 45 days to 90 days) and would increase the period of time a country must refrain from supporting terrorism before the President could remove such a designation (from 6 months to 2 years). It also requires the President to notify the Congress when the Administration initiates a review of a country's designation and, 20 days later, brief the Congress on the status of that review.

Section 104(d) establishes a license requirement for certain activities relating to the proliferation of weapons of mass destruction. Section 104(e) establishes specific notice requirement with respect to those licensed activities. Section 104(f) establishes strict license review standards for activities representing a proliferation concern.

Section 105. Administration of Export Controls. This section requires the President to delegate the administration of dual-use export controls to the Secretary of Commerce, the Secretary of Defense, the Secretary of State, the Director of National Intelligence, and the heads of other appropriate Federal Departments and agencies.

Section 106. Control Lists. Section 106 requires that the President establish a regular interagency review of each list of controlled items. In accordance with such review, the Secretary of Commerce is required to regularly update such lists to ensure that new items are appropriately controlled, with such controls adjusted as conditions change. Each list of controlled items shall be published in a form that facilitates compliance with it, particularly by small and medium-sized businesses, and academic institutions.

Section 107. Licensing. This section requires the President to establish a procedure by which the Department of Commerce shall issue licenses or other authorization for the export, reexport, or transfer of items controlled under this title. It also states that no fee may be charged in connection with license applications for controlled items.

Section 108. Compliance Assistance. This section authorizes the President to establish procedures to encourage closer collaboration between the public and private sectors in identifying proliferation or other export-control risks to U.S. national security.

Section 109. Requirement to Identify and Control Critical Technologies in Export Control Regulations. This section requires the President to establish an interagency process to identify emerging technologies that are not identified in any U.S. or multilateral control list, but nonetheless could be essential to U.S. national defense, intelligence, or other areas of national security.

Section 110. Penalties. This section defines what acts are unlawful under this title. Consistent with current law, this section also establishes criminal and civil penalties for export control violations, well as authority and procedures for criminal forfeiture. It also authorizes the President to establish a basis for denying the eligibility of persons convicted of a criminal violation to export, as well as to revoke any license or other authorization from such person.

Section 111. Enforcement. This section provides broad authority to the President to enforce U.S. export controls established under this title. Such measures should include the publication of best practices guidelines to assist industry in compliance with U.S. export controls. This section also includes provisions for protection of confidentiality of information relating to license applications, with exceptions relating to transmission of such information to the Congress and General Accountability Office.

Section 112. Administrative Procedure. This section provides that regulations relating to U.S. dual-use export controls shall be subject to several administrative procedures as defined in title 5 of the United States Code.

Section 113. Annual Report to Congress. This section requires the President to report annually to Congress on the implementation of these authorities. The report shall be unclassified but may contain a classified annex.

Section 114. Repeal. This section repeals the Export Administration Act of 1979.

Section 115. Effect on Other Acts. This section clarifies that except as otherwise provided in this title, nothing contained in this title shall be construed to impact any current U.S. export control laws. It also details Congressional expectations about the importance of close coordination of controls between Executive Branch agencies delegated with such responsibility.

Section 116. Transition Provisions. This section provides that all delegations of authority, rules, regulations, orders, determinations, licenses or other forms of administrative action that were made under the Export Administration Act, the International Emergency Economic Powers Act, or the Export Administration Regulations, and are in effect as of the date of enactment of this Act, shall continue in effect unless otherwise changed under the authority of this title. These transition provisions also apply to administrative and judicial proceedings, as well as determinations relating to state sponsors of terrorism.

Title II – Anti-boycott Provisions. This title incorporates the existing anti-boycott provisions from the expired Export Administration Act of 1979. These provisions discourage, and in some circumstances, prohibit U.S. companies from furthering or supporting the boycott of Israel sponsored by the Arab League, or certain other countries, including complying with certain requests for information designed to verify compliance with the boycott.

Section 201. Short Title. This title may be cited as the “Anti-boycott Act of 2018.”

Section 202. Policy. This section states that it is the policy of the United States to oppose restrictive trade practices or boycotts imposed by foreign countries or international governmental

organizations against other countries friendly to the United States or against any U.S. person. It also requires the President to issue regulations prohibiting any U.S. person, with respect to that person's activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take certain actions with intent to comply with, further, or support any foreign boycott against a country that is friendly to the U.S. that is also contrary to U.S. law or policy. Certain exceptions to this general prohibition also apply. It further provides that these anti-boycott restrictions shall also be enforced through foreign policy controls authorized under title I. This section imposes certain reporting requirements on U.S. persons who receive requests to implement restrictive anti-boycott measures. And it provides that this provision preempts other state and local laws regarding compliance with foreign boycotts.

Section 203. Enforcement. Consistent with existing law, this section provides for the imposition of civil penalties on a person who violates section 202 or any related regulation. Such penalties may only be imposed after notice and opportunity for a hearing in accordance with applicable sections of title 5, United States Code, and shall be subject to judicial review.

Title III – Sanctions on Ballistic Missiles and Chemical and Biological Weapons Proliferation. In general, this title carries over sanctions from the expired Export Administration Act against U.S. persons and foreign persons who engage in commercial transactions that violate missile proliferation, chemical and biological weapons controls.

Section 301. Missile Proliferation Control Violations. This section imposes sanctions against U.S. persons and foreign persons who engage in commercial transactions that violate missile proliferation controls. The section requires sanctions against any U.S. citizen whom the President determines to be engaged in exporting, transferring, conspiring to export or transfer, or facilitating an export or transfer of, any equipment or technology identified by the Missile Technology Control Regime Annex. The section further requires sanctions against any foreign person whom the President determines to be engaged in conduct that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent. The President may also prohibit importation into the U.S. of products produced by the foreign person. With notice to Congress, the President may also waive the imposition of the sanctions authorized in this section.

Section 302. Chemical and Biological Weapons Proliferation Sanctions. This section authorizes the President to apply procurement and import sanctions against foreign persons that he determines knowingly contribute to the use, development, production, stockpile, or acquisition of chemical or biological weapons by exporting goods or technology from the United States or any other country. If certain conditions are met, the President may delay the imposition of sanctions for up to 180 days or utilize certain foreign policy and national security exceptions. The President may terminate the sanctions after 12 months if he determines and certifies to Congress that the sanctioned person no longer engages in such activity. The President may waive the application of a sanction after a year of its imposition, if he determines it is in U.S. national security interests to do so. Not less than 20 days before a national security waiver is issued, the President must notify Congress with a full explanation of the rationale for waiving the sanction.