

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Part 764**

[Docket No. 060721198-6198-01]

RIN 0694-AD74

Revision and Clarification of Civil Monetary Penalty Provisions of the Export Administration Regulations**AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) to clarify the civil monetary penalties that BIS may impose for violations of the EAR during periods when the EAR are continued under the Export Administration Act, of 1979, as amended, the International Emergency Economic Powers Act, as amended, or other statutory authority. BIS is revising the EAR to reflect amendments to the International Emergency Economic Powers Act made by the USA PATRIOT ACT Improvement and Reauthorization Act of 2005.

DATES: This rule is effective August 4, 2006.

FOR FURTHER INFORMATION CONTACT: Melissa B. Mannino, Chief, Enforcement and Litigation Division, Office of Chief Counsel for Industry and Security, Telephone: (202) 482-5301 or E-mail: MMANNINO@bis.doc.gov.

SUPPLEMENTARY INFORMATION:**Background**

The Export Administration Act of 1979, as amended (EAA), which provided authority for promulgation of the EAR, included a date on which it would lapse. The EAA has lapsed and been renewed several times since its original enactment. At each lapse, the President has used his authority under the International Emergency Economic Powers Act (IEEPA) to continue in effect the EAR to the extent permissible by law. The most recent lapse of the EAA occurred on August 21, 2001. To address that lapse, the President, acting pursuant to IEEPA, issued Executive Order 13222 of August 17, 2001, which continued the EAR in effect. To keep the EAR in effect pursuant to IEEPA, the President has issued annual declarations stating that the emergency necessitating implementation of the EAR is continuing. Executive Order 13222 states, in part, that “* * * all orders, regulations, licenses, and other forms of administrative action issued,

taken, or continued in effect pursuant [to the EAA], shall remain in full force and effect as if issued or taken pursuant to this order, except that the provisions of sections 203(b)(2) and 206 [penalties] of [IEEPA] (50 U.S.C. 1702(b)(2) and 1705) shall control over any inconsistent provisions in the [EAR].” Further, prior to the date of publication of this rule, the EAR provided that “[i]n the event that any part of the EAR is not under the authority of the EAA, sanctions shall be limited to those provided by such other authority, but the provisions of this part and of part 766 of the EAR shall apply insofar as not inconsistent with that other authority.” (15 CFR 764.3(a) n.1).

Prior to publication of this rule, § 764.3(a)(1)(i) of the EAR provided for imposition of monetary penalties authorized by the EAA as amended, *i.e.* a maximum of \$100,000 for violations involving national security controls imposed under section 5 of the Export Administration Act of 1979 as amended and a maximum of \$10,000 for any other violation. However, since August 21, 2001, the date of the most recent lapse of the EAA, civil monetary penalties for violations of the EAR have been governed by the penalties set forth in the IEEPA, as adjusted by Department of Commerce regulations issued pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990. The adjusted maximum amount was \$11,000. On March 9, 2006, H.R. 3199, the USA PATRIOT ACT Improvement and Reauthorization Act of 2005, was enacted (Public Law 109-177) and amended Section 206 of the International Emergency Economic Powers Act to raise the maximum civil monetary penalty to \$50,000 per violation. Due to this increase in penalties, BIS is amending the EAR to clearly set forth the maximum civil monetary penalties it may impose for violations of the EAR. Hence, effective March 9, 2006, the increased IEEPA maximum civil monetary penalty of \$50,000 applies to any violation of the EAR or any license, order or authorization issued thereunder that occurs when the EAA is in lapse and IEEPA is the authorizing statute.

Changes Made by This Rule

This rule replaces the language in § 764.3(a)(1)(i) that referred to the specific civil monetary penalty amounts authorized by the EAA with more general language explaining that a civil monetary penalty authorized by the EAA may be imposed, and in situations in which any provision of the EAR is continued by IEEPA or other authority, the maximum monetary civil penalty is

that which is authorized by the applicable authority. This rule also removes the footnote to § 764.3(a) because the clarification to § 764.3(a)(1)(i) obviates the need for the footnote.

Effects of These Changes

The changes made by this rule provide that BIS may impose civil monetary penalties in the amount authorized by Public Law 109-177 which amended section 206 of IEEPA, among other laws. These changes clarify the source of authority for civil monetary penalties for violations of the EAR when the EAA has lapsed and the maximum amount of such penalties. This rule results in an explicit statement in the EAR that when any provision of the EAR is continued by IEEPA or other authority, the maximum civil monetary penalty is that which is authorized by the applicable authority. Therefore, for any violations of the EAR or license, order or authorization thereunder that occur on or after March 9, 2006 when the EAA is in lapse and IEEPA is the authorizing statute, BIS may impose a civil monetary penalty of up to \$50,000 per violation.

Rulemaking Requirements

1. This rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not contain any collection of information that is subject to the Paperwork Reduction Act.

3. This rule does not contain policies with federalism implications as this term is defined in Executive Order 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive the provisions of the Administrative Procedure Act requiring prior notice, the opportunity for public comment and 30-day delay in effectiveness. The changes made by this rule make clear that BIS may utilize any applicable statutory authority to impose civil penalties. Because the increase in IEEPA civil monetary penalties enacted in Public Law 109-177 became effective on March 9, 2006, BIS is revising the civil monetary penalty provision of the EAR

to conform with the statutory change and to avoid confusion as to what the actual maximum civil monetary penalty is, and therefore notice and public comment concerning this rule are unnecessary.

Because notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

■ Accordingly, part 764 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 764—[AMENDED]

■ 1. The authority citation for part 764 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 2. In § 764.3, revise paragraph (a)(1)(i), remove footnote number 1, and redesignate footnote 2 as footnote 1, to read as follows:

§ 764.3 Sanctions.

(a) *Administrative.*

(1) *Civil monetary penalty.*

(i) A civil monetary penalty not to exceed the amount set forth in the EAA may be imposed for each violation, and in the event that any provision of the EAR is continued by IEEPA or any other authority, the maximum monetary civil penalty for each violation shall be that provided by such other authority.

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Dated: August 1, 2006.

Matthew S. Borman,
Deputy Assistant Secretary for Export Administration.

[FR Doc. E6–12653 Filed 8–3–06; 8:45 am]

BILLING CODE 3510–33–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Parts 2700, 2704, and 2705

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (the

“Commission”) is an independent adjudicatory agency that provides trials and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977 (2000) (the “Mine Act”). Trials are held before the Commission’s Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. This rule makes final revisions to many of the Commission’s procedural rules, regulations implementing the Equal Access to Justice Act, and regulations implementing the Privacy Act. The Commission makes these changes in a continued effort to ensure the just, speedy, and inexpensive determination of all proceedings before the Commission.

DATES: This rule will take effect on October 3, 2006.

ADDRESSES: Questions may be mailed to Thomas A. Stock, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202–434–9944.

FOR FURTHER INFORMATION CONTACT:

Thomas A. Stock, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; fax 202–434–9944.

SUPPLEMENTARY INFORMATION: The final rules will apply to cases initiated after the rules take effect. The final rules also will apply to further proceedings in cases pending on the effective date, except to the extent that such application would be infeasible or unfair, in which event the former procedural rules would continue to apply.

I. Background

In October 2004, the Commission published an Advance Notice of Proposed Rulemaking (“ANPRM”) in which it sought suggestions for improving its procedural rules (29 CFR part 2700), Government in the Sunshine Act regulations (29 CFR part 2701), regulations implementing the Freedom of Information Act (“FOIA”) (29 CFR part 2702), and regulations implementing the Equal Access to Justice Act (“EAJA”) (29 CFR part 2704). See 69 FR 62632, October 27, 2004. In the ANPRM, the Commission identified several procedural rules set forth in part 2700 that required further revision, clarification, or expansion. See *id.* at 62632 through 62635. The Commission also stated that it would examine its

procedures for processing requests for relief from final judgments. *Id.* at 62632. The Commission did not include in the ANPRM any specific proposed revisions to the Commission’s regulations implementing the Government in the Sunshine Act (part 2701), the FOIA (part 2702), the EAJA (part 2704), or the Privacy Act (part 2705).

The comment period on the ANPRM closed on January 25, 2005. The Commission received comments from the Secretary of Labor through the U.S. Department of Labor’s Office of the Solicitor; the Pennsylvania Coal Association; the United Mine Workers of America (the “UMWA”); the National Mining Association; the National Stone, Sand & Gravel Association; and other individual members of the mining community or bar who practice before the Commission. Most commenters expressed some degree of agreement with various areas that the Commission had targeted to review for possible revision. The commenters also requested further changes not described by the Commission in the ANPRM.

In January 2006, the Commission published a Notice of Proposed Rulemaking (“NPRM”). 71 FR 553, January 5, 2006. In the notice, the Commission explained that it determined that changes to the Commission’s Procedural Rules and its regulations implementing the Privacy Act and EAJA were necessary, but that no revisions were necessary to its regulations implementing the Government in the Sunshine Act or FOIA. *Id.* at 554. Some of the changes in the NPRM were proposed in response to the comments received, while other changes were proposed in response to further reflection by the Commission or in response to developments in Commission proceedings. For example, after examining its procedures for processing requests for relief from final judgment, the Commission determined that such procedures could be made more efficient through informal means rather than through the rulemaking process. Such informal means include making available a summary of the Commission’s procedural rules described in simple terms and placing on the Commission’s Web site a page of frequently asked questions and answers regarding Commission procedure.

Although the proposed rules in this notice were procedural in nature and did not require notice and comment publication under the Administrative Procedure Act (“APA”), 5 U.S.C. 551, 553(b)(3)(A), the Commission invited comment from the interested public until March 6, 2006. Besides generally requesting comments on any revisions