

## Legal Sidebar

# Oil to Spare: The House Passes a Repeal of Crude Oil Export Restrictions

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On October 9, the House of Representatives passed [H.R. 702](#), a bill that would repeal longstanding tight restrictions on exports of domestically produced crude oil, by a vote of 261-159. The bill would repeal Section 103 of the [Energy Policy and Conservation Act of 1975](#) (EPCA), which directed the President to promulgate a rule prohibiting export of crude oil from the United States (with certain exemptions). The bill would also bar federal officials from imposing or enforcing any restriction on crude oil exports. The bill includes a savings clause intended to protect the President's authority to limit crude oil exports during emergencies or in the context of trade sanctions.

The restrictions on crude oil exports mandated by Section 103 of EPCA are found in the “short supply control” regulations administered by the Bureau of Industry and Security (BIS), an agency within the Department of Commerce. [The regulations](#) require a license for virtually all exports of crude oil, with just a few limited exceptions, and also set up fairly strict parameters limiting the issuance of such licenses to a narrow set of circumstances. The regulations also require BIS to review applications to export crude oil that do not fall under one of these exemptions on a “case by case basis” and to approve such applications on a finding that the proposed export is “consistent with the national interest and the purposes of the Energy Policy and Conservation Act.” However the regulations suggest that such applications will only be approved if the export will result in the import of an equal or greater quantity of crude into the U.S. and if “the applicant can demonstrate that for compelling economic or technological reasons, the crude oil cannot reasonably be marketed in the United States.” Taken together, these license requirements are so restrictive that people often say that Section 103 of EPCA and the regulations amount to a US “ban” on crude oil exports.

As noted above, H.R. 702 would both repeal the directive of Section 103 of EPCA and bar all federal officials from imposing or enforcing any restrictions on crude oil exports. This would likely remove the statutory basis for the BIS regulations and bar anyone from enforcing the existing regulations. The bar on imposing or enforcing restrictions would also render ineffective provisions in other statutes that also mandate licensing requirements for crude oil [produced from the Outer Continental Shelf](#) or [the Naval Petroleum Reserve](#) or [transported via right of way over federal lands](#). It should be noted, however, that this bar on imposing or enforcing restrictions on crude oil exports is broadly worded. H.R. 702 does not define or clarify what constitutes a “restriction” on crude oil exports, leaving the scope and impact of this provision open to interpretation and the possibility that application will be broader than intended.

Section 5 of H.R. 702 contains a savings clause, which ensures that the President will still be able to limit or regulate crude oil exports under various statutes that grant the President expanded authority in emergencies. Section 5 also preserves the President's authority to impose trade sanctions that would limit such exports. Because the BIS short supply control regulations remain in place only through [exercise of the President's authority under the International Emergency Economic Powers Act](#), which is one of the statutes protected by the H.R. 702 Section 5 savings clause, an argument could potentially be made that the savings clause protects the BIS short supply control regulations from repeal. However it would appear more likely that a court would interpret H.R. 702 to give effect to the congressional intent to repeal existing limitations on crude oil exports.

The bill next moves to the Senate. [The White House has declared its strong opposition to the bill](#), making a veto likely if it should reach the President's desk.

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