

OFFICE OF FOREIGN ASSETS CONTROL

BIENNIAL REPORT OF LICENSING ACTIVITIES

PURSUANT TO

THE TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT OF 2000

September 2000 - September 2002

I. Overview

This report is submitted pursuant to Section 906(c) of the Trade Sanctions Reform and Export Enhancement Act of 2000 ("TSRA") and covers activities undertaken by the Treasury Department's Office of Foreign Assets Control ("OFAC") under Section 906(a)(1) of the TSRA from September 2000 through September 2002. On July 12, 2001, OFAC issued interim regulations with a request for public comment, implementing the TSRA. The regulations went into effect on July 26, 2001. Prior to TSRA, a similar licensing program was in effect pursuant to a presidential policy initiative. In implementing these regulations, OFAC worked with the Commerce Department's Bureau of Industry and Security to implement jointly-devised procedures for handling export authorization requests subject to the TSRA. Under these procedures, OFAC processes license applications requesting authorization to export agricultural commodities, medicine, and medical devices to Iran, Libya, and Sudan under the one-year specific licensing regime set forth in Section 906 of the TSRA.

OFAC accomplishments in effectively implementing the TSRA during its first two years of operation included the following:

- ❖ Clear and concise license application guidelines were published on the Internet shortly after the regulations were published in the Federal Register;
- ❖ Efficient and innovative electronic processing procedures were established by OFAC to refer license applications to the State Department for interagency review;
- ❖ The backlog of applications (45 in total) pending at the State Department from the previous program was cleared up under the TSRA procedures; and
- ❖ The average number of business days for the OFAC Licensing Division to issue a licensing determination¹ under the TSRA regulations was 23.2 business days.

Despite the accomplishments, the majority of complete and eligible license applications² were not processed within the established time guidelines for license application review.³ (**See**

¹ A licensing determination is defined as any action, either intermediate or final, that OFAC takes on a license application. It may take the form of a license, a "return-without-action" letter, a general information letter, an interpretation letter, a denial letter, a telephone call, a fax, or an e-mail.

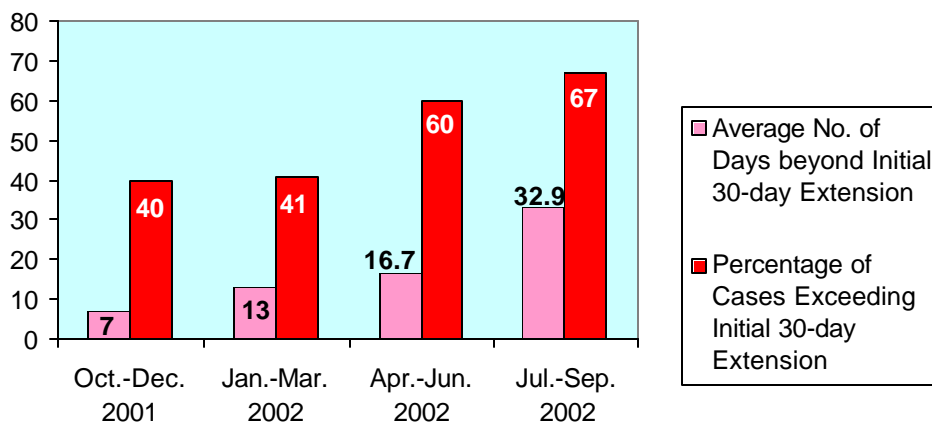
² OFAC's Licensing Division forwards only complete and eligible license applications to the State Department for review.

³ *Federal Register/Vol. 66, No. 134/Thursday, July 12, 2001/Rules and Regulations, 36685, provides the following guidelines:* The expedited process will include, when appropriate, referral of the one-year license request to other

Graph 1) OFAC issued a licensing determination on 78.2 percent of the license applications received during the July 26, 2001 – September 30, 2002 period. While the general disruption in the U.S. mail service in Fall 2001 and the increased complexity of license applications undercut the efficiency of the licensing process, the events of September 11 have also led to more protracted scrutiny on the part of reviewing agencies. The 30-day extension of the nine-business day review period has become the rule rather than the exception as originally anticipated, and is now routinely taken for all cases. In addition, this additional review period is being increasingly extended beyond 30 days, to a point where license applications currently referred for interagency review are requiring on average a review period of more than 70 business days.

GRAPH 1

Clearance by Reviewing Agencies



These cases are evaluated by other agencies both in terms of whether the foreign entities involved in the transaction “promote international terrorism,” as required in section 906 of the TSRA, and in terms of whether the commodities at issue implicate independent export control regimes involving chemical or biological weapons or weapons of mass destruction as provided in section 904(2)(C) of the TSRA. Scrutiny of these cases on these grounds often results in requests for additional information by the reviewing agency, which neither the applicant nor OFAC can anticipate, causing additional delays in the review process.

government agencies for guidance in evaluating the request. If no government agency raises an objection to or concern with the application within nine business days from the date of any such referral, OFAC will issue the one-year license, provided that the request otherwise meets the requirements set forth in this rule. If any government agency raises an objection to the request within nine business days from the date of referral, OFAC will deny the request for the one-year license. If any government agency raises a concern short of an objection with the request within nine business days from the date of referral, OFAC will delay its response to the license request for no more than thirty additional days to allow for further review of the request.

II. Program Operation

From July 26, 2001 to September 30, 2002, OFAC's Licensing Division received a total of 795 license applications pursuant to Section 906(a)(1) of the TSRA. During this period, OFAC issued licensing determinations on 622 of the 795 license applications. A total of 253 licenses and 54 license amendments⁴ were issued from July 26, 2001 through September 30, 2002 (**See Charts 1 and 2**). On average, licenses and license amendments were issued within 36.9 business days of receipt of the application. Upon completion, 76 percent (234 in total) of the licenses and license amendments issued were sent via e-mail in Adobe Acrobat PDF format to licensees, a service which was greatly lauded by the licensees. In addition, OFAC issued 48 general information letters (average turnaround: 3.8 business days), 158 "return-without-action" letters ("RWA letters") (average turnaround: 3 business days), 25 denial letters (average turnaround: 36 business days), and 13 Congressional letters (average turnaround 5.8 business days) (**See Graphs 2 and 3**). The average number of business days for the Licensing Division to issue a licensing determination in response to submissions to OFAC on any license application under the TSRA regulations was 23.2 business days. The total of licenses issued, general information letters, RWA letters, and denial letters does not equal the number of license applications received because: 1) not all license applications received during this reporting period were closed in this reporting period; 2) in some instances multiple applications from the same license applicant were combined into one license; and 3) some license applications were handled via telephone, fax, or e-mail.

CHART 1

Number of License Applications and Licenses Issued by Product

	Agricultural Commodities	Medicine	Medical Devices	TOTAL
License Applications	389	65	341	795
Licenses Issued	136	23	94	253
License Amendments Issued	46	5	3	54
Applications Denied	5	6	14	25

CHART 2

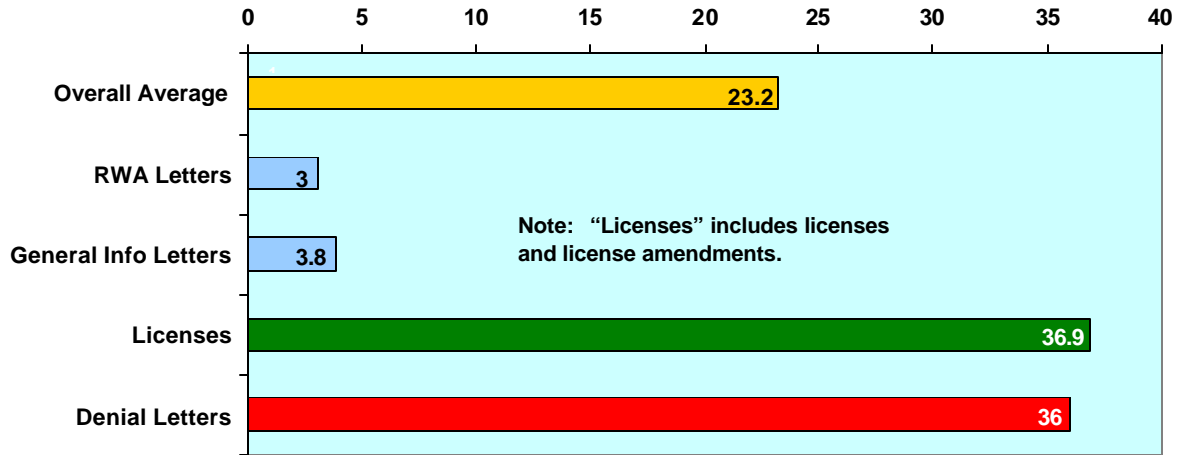
Number of License Applications and Licenses Issued by Country

	Iran	Libya	Sudan	TOTAL
License Applications	580	135	80	795
Licenses Issued	187	43	23	253
License Amendments Issued	47	2	5	54
Applications Denied	21	3	1	25

⁴ A "license amendment" is an amendment to an existing license previously issued by OFAC. Some license amendment applications require interagency review, such as adding an additional end-user or additional commodities to an existing license.

GRAPH 2

Aggregate Average Time for Issuing License Determinations
(July 2001 - September 2002, in business days)



GRAPH 3

Average Time for Issuing License Determinations per Quarter
(July 2001 - September 2002, in business days)



III. Public Comments

In accordance with Section 906(c)(5) of the TSRA, OFAC published in the *Federal Register* a request for comments on the effectiveness of OFAC's TSRA licensing procedures on September 6, 2002 (see attached). As anticipated, the comments received were largely critical. While a few commentators commended OFAC for certain aspects of the licensing procedures, most expressed deep concern about the delays, developments, and trends within the licensing procedures. Commentators' praise included the following:

"The License Application Guidelines and OFAC internal processes are clear and understandable."

"[I]f the underlying motivation leading to the enactment of the Trade Sanctions Reform Act was to remove food and medical devices from international trade embargoes designed to effect foreign policy objectives, we find OFAC has succeeded in creating an administrative structure to accomplish this..."

"So far, we have received positive feedback on the licensing regulations, particularly relating to export licenses for Iran....[W]e are encouraged by the openness and transparency OFAC has shown in this regulatory process and look forward to continued cooperation as these regulations are implemented."

Most of the comments received, however, were critical of the licensing procedures, and urged that action be taken to redress the following concerns:

- ❖ Lack of transparency in the interagency review process;
- ❖ Non-adherence to the established time guidelines; and
- ❖ Inconsistency in license application requirements.

Among the suggestions submitted by commentators for improving the licensing procedures were the following:

- ❖ Institute a "white list" of approved importers/end-users;
- ❖ Devote more resources to the license application processing, both at OFAC and at the reviewing agencies; and
- ❖ Develop an automated electronic export license application tracking system.

In order to ensure the continued efficient and effective operation of the licensing procedures, OFAC is currently undertaking a review of its licensing procedures to better meet the needs of license applicants. All comments made will be considered in the process of this review.

IV. Conclusion

Despite delays in the processing of license applications, largely due to the more protracted scrutiny on the part of other reviewing agencies, OFAC largely administers the TSRA in a highly efficient and effective manner, due in large part to the efficient and innovative electronic processing procedures that were established by OFAC in order to process license applications and forward them when appropriate for interagency review. The average processing time for issuing licenses was 36.9 business days, and the average time for issuing licensing determinations was 23.2 business days, well within the established time guidelines for license application review.³ Nonetheless, OFAC is keenly aware of the concerns of industry as expressed in the request for comments, and is committed to reversing the current increase in average processing times by working closely with the reviewing agencies to improve the licensing procedures.