

OFFICE OF FOREIGN ASSETS CONTROL

BIENNIAL REPORT OF LICENSING ACTIVITIES

PURSUANT TO

THE TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT OF 2000

October 2004 - September 2006

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 October 2004 through September 2006. Under the procedures established in its TSRA-related regulations, OFAC processes license applications requesting authorization to export agricultural commodities, medicine, and medical devices to Iran and Sudan under the one-year specific licensing regime set forth in Section 906 of the TSRA.

There was a 21.2 percent increase in the number of license applications received during this reporting period compared to the prior period (1,794 for Oct. 2004 – Sep. 2006, 1,480 for Oct. 2002 – Sep. 2004). OFAC was able to issue licensing determinations¹ on 83.2 percent of all the license applications received during the October 2004 – September 2006 period (compared to 92.0 percent for the Oct. 2002 – Sep. 2004 period), and issued additional determinations after the two-year period ended. The average processing time for issuing licenses decreased by 29.3 percent to 33.1 business days in this reporting period (compared to 46.8 days in the Oct. 2002 – Sep. 2004 period), and the average time for issuing licensing determinations decreased by 30.2 percent to 29.3 business days during the October 2004 – September 2006 reporting period versus 42.0 business days in the preceding reporting period.

The increased complexity, volume, and length of license applications (the majority of applications pertain to the export of medical devices to Iran) coupled with the more protracted scrutiny on the part of other reviewing agencies continued to affect processing time of license applications in this reporting period (**See Graph 1**). 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.

¹A 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 license amendment, a “return-without-action” letter, a general information letter, an interpretative letter, a denial letter, a telephone call, a fax, or an e-mail.

II. Program Operation

From October 1, 2004 to September 30, 2006, OFAC's Licensing Division received a total of 1,794 license applications pursuant to Section 906(a)(1) of the TSRA. During this period, OFAC issued licensing determinations on 1,493 of the 1,794 license applications. A total of 1,104 licenses and 61 license amendments² were issued from October 1, 2004 through September 30, 2006 (**See Charts 1 and 2**). On average, licenses and license amendments were issued within 33.1 business days of receipt of the application. Upon completion, 93.4 percent (1,088 in total) of the licenses and license amendments issued were sent via e-mail in Adobe Acrobat PDF format to licensees, a service that generated favorable comment by licensees. In addition, OFAC issued 270 "return-without-action" letters ("RWA letters") (average turnaround: 10.3 business days), and 62 denial letters (average turnaround: 36.5 business days) (**See Graph 1**). 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 29.3 business days. The total of licenses/license amendments, RWA letters, and denial letters issued 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.

As in the preceding reporting period, the preponderance of license applications submitted and licenses/license amendments issued was for Iran (**See Chart 3**). A total of 1,581 license applications (88.1%) was received for Iran, in contrast to 197 (11.0%) for Sudan. Likewise, 1,025 licenses/license amendments (88.0%) were issued for the sale of agricultural commodities, medicine, and medical devices to Iran, versus 140 (12.0%) for Sudan. In keeping with the program's trend, over half of the license applications (53.5%) and 44.7 percent of the licenses/license amendments were for the export of medical devices to Iran and Sudan. Of the 1,581 license applications for Iran, 495 (31.3%) were for agricultural commodities, 223 (14.1%) for medicine, and 863 (54.6%) for medical devices. Of the 1,025 licenses/license amendments issued for Iran, 346 (33.8%) were for agricultural commodities, 214 (20.9%) for medicine, and 465 (45.4%) for medical devices. The percentage breakdown of the 197 license applications for Sudan is: 78 (39.6%) for agricultural commodities, 28 (14.2%) for medicine, and 91 (46.2%) for medical devices. Of the 140 licenses/license amendments issued for Sudan, 59 (42.1%) were for agricultural commodities, 26 (18.6%) for medicine, and 55 (39.3%) for medical devices.

CHART 1
Number of License Applications and Licenses Issued by Product

	Agricultural Commodities	Medicine	Medical Devices	TOTAL
License Applications	581	253	960	1,794
Licenses Issued	382	222	500	1,104
License Amendments Issued	23	17	21	61
Applications Denied	6	2	54	62

² 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.

CHART 2
Number of License Applications and Licenses Issued by Country

	Iran	Sudan	TOTAL
License Applications ³⁴	1,581	197	1,794
Licenses Issued	969	135	1,104
License Amendments Issued	56	5	61
Applications Denied	58	4	62

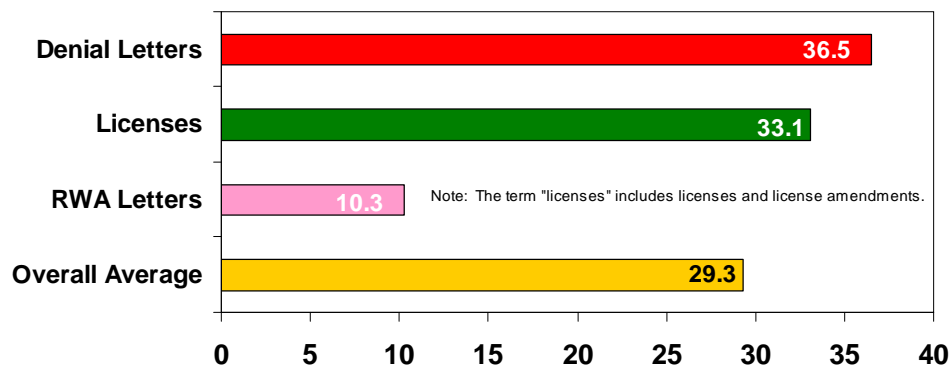
CHART 3
Number of License Applications and Licenses Issued by Country and Product

	Agricultural Commodities	Medicine	Medical Devices	TOTAL
IRAN				
License Applications	495	223	863	1,581
Licenses and License Amendments Issued	346	214	465	1,025
SUDAN				
License Applications	78	28	91	197
Licenses and License Amendments Issued	59	26	55	140

GRAPH 1

Average Time for Issuing Licensing Determinations

(October 2004 - September 2006, in business days)



³ OFAC received six license applications for Libya in the Oct. 2004 – Sep. 2006 period of operation. Effective September 21, 2004, Executive Order 13357 terminated the emergency declared in Executive Order 12543 with respect to the policies and actions of the Government of Libya and revoked related Executive Orders. Accordingly, no OFAC license is required for exports to Libya. Executive Order 13357 does not, however, eliminate the need to comply with the licensing provisions of the Export Administration Regulations, 15 C.F.R. Parts 730 et seq.

⁴ OFAC received 10 license applications for Syria in the Oct. 2004 – Sep. 2006 period of operation. On December 12, 2003, President Bush signed the Syria Accountability and Lebanese Sovereignty Restoration Act ("SAA") (Public Law 108-175). On May 11, 2004, President Bush issued Executive Order 13338 to implement §§ 5(a)(1), 5(a)(2)(A), and 5(a)(2)(D) of the SAA. Section 5(a)(1) of the SAA requires a prohibition on the export to Syria of all items on the Commerce Control List. Section 5(a)(2)(A) prohibits the export or reexport to Syria of all products of the United States, with the exception of food and medicine. The result of the implementation of §§ 5(a)(1) and 5(a)(2)(A) of the SAA is to restrict the export and reexport of all items subject to the Export Administration Regulations ("EAR") to Syria. The Department of Commerce's Bureau of Industry and Security is responsible for licensing exports and reexports, including food and medicine, to Syria.

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 December 11, 2006. For the October 2004 – September 2006 reporting period, OFAC received three comments, two from trade associations and one from a law firm. All the comments received expressed concern about the delays, developments, and trends within the licensing procedures. Among the perceived concerns that commentators requested that OFAC redress were:

- Delays in the licensing process;
- Lack of transparency in the interagency review process;
- Non-adherence to the established time guidelines;
- Inconsistency in license application requirements;
- “Redundant” requests to obtain official EAR99 Commodity Classifications;
- Difficulty in obtaining guidance or clarification concerning the scope of licenses issued;
- Difficulty in obtaining meaningful information concerning the status of pending license applications; and
- Failure to issue required reports (quarterly and biennial) to Congress in a timely fashion.

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

- Process and issue one-year TSRA licenses on a more expedited schedule;
- Devote more resources to the license application processing, both at OFAC and at the reviewing agencies;
- Institute a “white list” of approved importers/end-users;
- Develop an internet- or telephone-based automated electronic export licensing application tracking system;
- Institute a priority processing system for agricultural commodities license applications;
- Establish an expedited mechanism for the renewal⁵ of expired one-year licenses;
- Work with the Commerce Department's Bureau of Industry and Security (“BIS”) to have BIS' “Illustrative List of EAR99 Medical Devices” updated;
- Add additional staff to answer exporters' questions; and
- Send TSRA licenses on a consistent basis via e-mail to applicants.

In order to ensure the continued efficient and effective operation of the TSRA licensing procedures, OFAC will undertake 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.

⁵ There are *no* renewals of TSRA licenses. Licensees must submit a new complete and eligible application requesting the issuance of a license for a one-year period.