

2. The Office of Exporter Services

The Office of Exporter Services (OEXS) is responsible for administering EA's education and compliance programs and implements export policy within the Export Administration. In this capacity, OEXS develops BXA's outreach seminar program for the purpose of educating the exporting community about export controls, regulations, and licensing issues. OEXS provides the exporting community with advice on a broad range of export issues, including licensing and documentation requirements for export transactions, and special country policies. OEXS implements the EPCI End-User Verification process through which U.S. exporters are informed of proliferation concerns. It develops Internal Control Program Guidelines and Export Management System Guidelines which companies use to ensure exports are consistent with the Export Administration Regulations (EAR). Finally, OEXS administers International Cooperative Licenses to facilitate the export of items needed to fulfill U.S. partnership obligations in international cooperative efforts.

Export Licensing Liberalizations

OEXS is responsible for codifying regulatory policy within EAR (15 CFR parts 300 to 799), revising the current regulations, drafting new regulations, and coordinating the clearance of all changes to the Export Administration Regulations.

On January 15, 1998, BXA published a rule which released from control eighty to 90 percent of the items used in commercial nuclear powerplants when exported to most countries, while maintaining control of exports of critical nuclear power production components, such as reactor vessels, fuel rod equipment, and primary pumps, under the authority of the Nuclear Regulatory Commission. This action ensured that the adverse effect of these controls on non nuclear commodities was minimized, while control of items with potential nuclear weapons utility are sustained.

On March 24, 1998, BXA published a rule implementing the Australia Group's decision to change the method of calculation of mixtures containing certain chemical precursors from "solvent free basis" to "absolute weight." Mixtures containing these chemical precursors may now be shipped without a license if they qualify for a *de minimus* exemption based on the ratio of the weight of controlled chemicals in a mixture to the absolute total weight of the mixture. This revision simplified the calculation and improved the coordination of the mixtures policy among Australia Group members.

On April 27, 1998, BXA published a rule (concurrently with the Bureau of Census) amending the EAR by revising the Shipper's Export Declaration (SED) provisions to expand the country scope of the \$2,500 exemption for filing an SED with the Bureau of the

Census. This action furthers the efforts of the Census Bureau to harmonize the Foreign Trade Statistics Regulations (FTSR) with the BXA's EAR.

On September 22, 1998, BXA published regulations implementing the guidelines to permit the export of encryption products under a license exception to banks and financial institutions in 45 eligible countries. This affects encryption exports for the world's 100 largest banks and almost 70 percent of the world's financial institutions.

Other Regulatory Actions

On January 15, 1998, BXA published comprehensive changes to the EAR to include the Wassenaar Arrangement's List of Dual-Use Goods and Technologies in the Commerce Control List. To simplify the conversion process for exporters, BXA also harmonized items on the Wassenaar list to conform to the European Union dual-use list and lists of other international control regimes to which the United States is a party.

On February 2, 1998, BXA published a rule amending the EAR to implement the requirements mandated by the National Defense Authorization Act of Fiscal Year 1998 (NDAA). The NDAA requires submission of advance notification of exports and reexports of high-performance computers to certain countries. The NDAA further requires that BXA conduct post shipment verifications of such exports.

On November 19, 1998, BXA published a new licensing policy for the export or reexport of U.S. origin items controlled for nuclear nonproliferation and missile technology reasons to India and Pakistan, together with a list of Indian and Pakistani entities on whom broad licensing requirements would be imposed.

Customer Service

Industry counseling remains an essential component of BXA's mission. Through a variety of outreach programs, BXA promotes an understanding of U.S. export control laws which enhance compliance and facilitate U.S. international competitiveness. OEXS accomplishes its outreach and counseling activity through its headquarters in Washington, D.C., and its Western Regional Office (WRO) which has locations in both Orange County, and Silicon Valley, California. The regional offices are located in the fastest growing, high technology regions in the United States, and are within commuting distance of over 10 percent of the total U.S. population and the third largest port in the world. This year, the Western Regional Office celebrated its 10th year of service to the business community.

Export Compliance Seminar Program

As a result of BXA's commitment to provide the business community with information regarding the constant changes in export policy and licensing procedures, OEXS provides a range of seminars and workshops to educate and inform this community. An important aspect of this activity is cosponsoring programs throughout the United States with a variety of industry trade associations, universities and colleges, state and local governments, and nonprofit international business related organizations. Working with these organizations furthers BXA's goal of maintaining a cooperative relationship with industry.

In Fiscal Year 1998, OEXS conducted 80 export compliance seminars with more than 6,500 participants. In addition to its own programs, OEXS participated in more than 115 international trade-related events, reaching more than 6,100 business representatives. These events were sponsored by numerous public and private sector organizations. Much of the feedback provided by the business community is reviewed and evaluated for consideration in developing future programs.

In January 1998, BXA's Western Regional Office hosted a series of events for the People's Republic of China (PRC) and Hong Kong delegations in Silicon Valley, California. The individual events were designed to facilitate the exchange of regulatory information between these officials and U.S. industry. The events offered the opportunity for officials to hear from manufacturers on the steps they must take to comply with U.S. export control laws when conducting trade. Participating U.S. companies and government officials learned more about conducting business in China and Hong Kong.

In Fiscal Year 1998, OEXS continues to provide the revised export licensing seminar program that includes increased government-industry interaction on export licensing policy and an extended format. The Bureau of Census, the Department of Treasury's Office of Foreign Assets Control, and Export Enforcement participate in these scheduled programs. As part of the program, OEXS continues to provide specialized workshops, including commercial encryption licensing, export management systems, and freight forwarder programs. In FY 1999, OEXS will include the U.S. Customs Service in these programs to further BXA's commitment to customer service.

Update 1998

BXA's eleventh annual Update Conference on Export Controls and Licensing attracted the largest exporting audience -- more than 850 participants-- in the 11 years during which it has been presented. The annual conference is BXA's premiere event, in addition to serving as the largest Department of Commerce event in the Washington, D.C. area. This program allows high-level Government officials to conduct policy and regulatory sessions for business and industry to discuss significant changes to export control policies. BXA's Update West conference, held in California, attracted more than 480 industry participants.

Commerce Department officials and representatives from the interagency community discussed major developments in export control policy, including the newly released encryption export control liberalizations, technical data and software controls, export management systems, proliferation controls, and other issues relating to export control requirements.

One-on-one Counseling

To complement its seminar program, OEXS regulatory specialists provide extensive, one-on-one counseling to the exporting community. Counselors provide accurate and in-depth responses on a wide range of export control and licensing issues of interest to the exporting community. OEXS provided guidance to more than 140,000 inquiries and 350 visitors. This year, OEXS experienced a decrease in the demand for one-on-one counseling. This decrease is a combination of several factors. In Fiscal Years 1996 and 1997, BXA conducted extensive educational programs to instruct U.S. exporters on procedures for implementing the revised EAR. This revision resulted in an increase in correspondence and telephone calls during Fiscal Year 97. In addition, BXA's customer service/outreach programs have been augmented through the enhanced BXA website which offers comprehensive, up-to-date information on U.S. export controls.

Through OEXS, BXA advises industry on a broad range of export control issues, including export licensing requirements to ship high technology products, documentation requirements for export transactions, and special country policy concerns. Counselors act as intermediaries between exporters and licensing officials by forwarding relevant case-specific information to the licensing officers, and arranging meetings with licensing officers and industry representatives. In addition, OEXS provides referrals to other trade organizations which offer assistance with export related issues such as trade finance and marketing.

As part of the BXA and industry cooperative effort, OEXS authorizes emergency license of export applications which meet specific criteria. If approved, verbal authorization to ship is given to the exporter followed by issuance of a license. These cases are often approved within a day of receipt of the application. In Fiscal Year 1998, OEXS granted emergency processing to 31 cases, representing \$67 million in authorized exports.

In Fiscal Year 1998, OEXS continued its customer service initiatives through the distribution of brochures and export control-related publications. OEXS published an "Introduction to the Department of Commerce's Export Controls." This brochure will be available in both English and Spanish in the coming fiscal year. As an additional service to industry, OEXS maintains export control material in information libraries in Washington,

D.C. and Orange County, California. Information and publications on exporting, marketing, the Denied Persons List, and seminar schedules, as well as counseling services, are among the many types of export control and marketing information available. OEXS also ensures that this information is made available to various regional government trade offices. This information is also available on BXA's Website.

Expanded Automation Services

OEXS maintains an extensive subscriber base for its broadcast e-mail and fax systems. Known as "netFacts" and "FastFax," these systems provide timely regulatory and policy updates to more than 3,300 businesses throughout the United States. This system is invaluable in alerting the exporting community to key regulatory changes and upcoming events or policy changes. Further, BXA maintains a comprehensive array of documents available free-of-charge, 24 hours a day, via a fax-on-demand system. The system contains more than 50 documents covering a wide range of trade issues, and has proved a valuable exporter resource.

Export License Processing

BXA experienced a marginal decrease (less than percent) in the number of license applications it received in Fiscal Year 1998. During Fiscal Year 1998, BXA received 10,696 applications, in contrast to 11,472 applications in Fiscal Year 1997. This continues to remain above the 8,705 license applications received during Fiscal Year 1996, and BXA anticipates that license application submissions will increase due to continued technology advances, the expansion of the Entity List (which requires exporters to seek a license to export to certain entities products that were previously eligible for shipment without a license), and the increase in "deemed export" license applications.

The number of license applications received continues to remain well below the 26,126 applications submitted to BXA in Fiscal Year 1993. Dramatic licensing liberalizations implemented following the September 30, 1993 release of the Trade Promotion Coordinating Committee's (TPCC) report to Congress on developing a "National Export Strategy" has reduced licensing activity by over 55 percent over the past six fiscal years. By the end of Fiscal Year 1998, BXA acted upon 11,016 applications (including cases that were pending from Fiscal Year 1997), approving 8,545 individual licenses, returning 2,130 without action and denying 329, and suspending nine. (See Table II. 1-1). At the end of Fiscal Year 1998 1,450 applications were still pending.

During Fiscal Year 1998, BXA experienced a slight increase in the number of applications on which action had not been taken by the deadlines established by the Export Administration Act. By the end of Fiscal Year 1998 action had not been taken on 67 applications by the statutory deadlines compared to 56 in Fiscal Year 1997. This still remains well below Fiscal Year 1995 figures when the number of applications still pending

past the statutory deadline was 82.

Under the procedures established by Executive Order (EO) 12981, the average processing time for applications which did not require referral to another agency was 10 days, while the average processing time for applications requiring referral was 33 days. During Fiscal Year 1998, 86 percent of all applications required interagency referral, compared to 91 percent in Fiscal Year 1997. Overall, average processing times (referred and non referred) decreased from 32 days in Fiscal Year 1997 to 30 days in Fiscal Year 1998. This decrease in average processing times may be attributable to the 5 percent decrease in the number of licenses requiring interagency referral. However, BXA anticipates that this number will increase in Fiscal Year 1999 based on current trends in license submissions as previously described.

Export License Referral Process

The Department of Commerce, through Executive Order 12981 refers applications to other agencies for review and recommendation. The principal referral agencies are the Department of Defense, the Department of Energy, the Department of State and the Arms Control and Disarmament Agency (ACDA). Since the transfer of jurisdiction of commercial encryption products to The Departments of Commerce, the Department of Justice and the National Security Agency (NSA) also have a role in the license review process for encryption license applications.

Under EO 12981, when agencies do not agree on applications, they are referred to the Operating Committee (OC), which is chaired by the Department of Commerce. Before referral to the OC, certain license applications can be discussed at State-chaired, working-level, interagency groups which review cases subject to nuclear nonproliferation, missile technology, and chemical and biological weapons controls.

Agency recommendations are required to be submitted to the Commerce Department within 30 days of receipt of the original referral from Commerce. The OC Chair considers the recommendations of the reviewing agencies and informs them of the Chair's decision within 14 days after receipt of the agency recommendations. Any reviewing agency may appeal the decision of the Chair of the OC to the Chair of the Advisory Committee on Export Policy (ACEP). In the absence of a timely appeal, the Chair's decision is final. The ACEP is an Assistant Secretary-level body which is chaired by Commerce, with its principal members coming from the agencies listed above.

An agency must appeal a matter to the ACEP within five days of the OC's final decision. Appeals must be in writing from an official appointed by the President with consent of the Senate, or an officer properly acting in such capacity, and must cite both the statutory and regulatory bases for the appeal. Decisions of the ACEP are based on a majority vote. Any dissenting agency may appeal the decision to the Export

Administration Review Board (EARB) by submitting a letter from the head of the agency. In the absence of a timely appeal, the majority vote decision of the ACEP is final.

The Secretary of Commerce is the Chair of the EARB, a Cabinet-level group with the Secretaries of Defense, Energy and State as the other voting members. The Chair of the Joint Chiefs of Staff and the Director of Central Intelligence have non-voting rights as members of the Board. Export applications considered by the EARB are resolved by a majority vote. Any agency may appeal the decision to the President. In the absence of a timely appeal, the decision of the EARB is final. (As a practical matter, it is rare for cases to be appealed to the EARB, it almost never is appealed to the President.)

EO 12981 reduced the time permitted to process license applications. No later than 90 calendar days after it is submitted, final action must be taken or a complete license application or it is escalated to the President for decision. Prior to implementation of EO 12981, the law EAA provisions required final action to be taken on every application within 120 days of its initial submission to the Commerce Department.

Electronic Licensing

In Fiscal Year 1998, the number of all license applications submitted electronically using the Export License Application and Information Network (ELAIN) decreased by 5 percent from the previous year from 40 percent to 35 percent. The primary purpose for electronic licensing is to assist U.S. exporters that submit a high volume of license applications. A contributing factor for the decline in electronic submissions may be the increase in license submissions by U.S. exporters who otherwise would use license exceptions for India and Pakistan. Such exporters may not have established accounts with the various vendors which offer electronic licensing for BXA. For the remaining 65 percent submitted on an export license application form, the License Application Scanning System (LASSie), a PC-based forms processing and image management system, scans applications into the system. The 748P Multipurpose Application Form can be used to apply for an export license or a classification request. For both LASSie and ELAIN, technical specifications, import certificates, and other documents are submitted by telefax or express mail. BXA continues to work on the development of the Simplified Network Application Process (SNAP) which would allow BXA to accept export license applications and reporting forms in an electronic format through the Internet.

OEXS continues to operate the Multipurpose Application Records & Retrieval System (MARRs) which replaced the former microfiche system. MARRs is a PC-based forms and image management system. The automated data base provides an electronic image of all export and classification requests and supporting documentation whether submitted manually or electronically.

“Is Informed” Process

The development of a list of entities of concern through the “Is Informed” process arose from the Enhanced Proliferation Control Initiative (EPCI) begun in 1990 to stem the spread of missile technology as well as nuclear, chemical and biological weapons. Under EPCI, BXA can impose licensing requirements on exports and reexports of normally uncontrolled goods and technology where there is an unacceptable risk of use in or diversion to activities related to nuclear, chemical or biological weapons or missile proliferation, even if the end-user is not primarily weapons-related. BXA maintains an "Entity List" in the EAR to provide notice to the public of certain entities subject to such licensing requirements.

Since February 1997, the BXA has published several Commerce Department rules which added names to the “Entity List.” The most recent publication took place on November 19, 1998, when BXA published a rule in the Federal Register that amended the EAR to implement the Administration's sanctions on India and Pakistan. The rule codified those sanctions implemented in June that included a policy of denying licenses for exports and reexports of items controlled for nuclear nonproliferation and missile technology reasons to India and Pakistan, with limited exceptions. Additionally, the rule added certain Indian and Pakistani Government, parastatal, and private entities to the Entity List.

The process of publicly identifying these entities was revised by the National Security Council in December 1996. The guidelines issued by the National Security Council incorporate many aspects of EO 12981 which streamlined the export licensing review process. This improved process injects accountability, transparency, and timeliness into the “Is Informed” process. Activities of companies which raise a proliferation concern are reviewed by a BXA chaired interagency group. This group has 14 days to determine if the export of an item to a particular entity presents an unacceptable risk of use in or diversion to missile, chemical or biological weapons and nuclear-related proliferation activities. If a positive determination is made, the committee decides if a licensing requirement should be imposed for otherwise “uncontrolled” items to that entity. Decisions are made by a majority vote. Agencies which disagree with the majority vote may escalate the decision to the ACEP.

Special Licensing and Export Compliance/Special Comprehensive License

OEXS offers a more efficient licensing mechanism for exporters who routinely make high volume shipments of pre-approved items to pre-approved destinations and end-users for pre-approved end-uses. A special license was established for exporters to use in lieu of submitting individual applications. By reducing the paperwork burden on exporters and reexporters, allowing more flexibility and improving exporter delivery times by making it unnecessary for them for individual license approvals from BXA, this license helps U.S. firms remain competitive in the global marketplace.

This licensing option, titled the Special Comprehensive License (SCL), is available to experienced exporters that are reliable and have a strong corporate commitment to the development and maintenance of an Internal Control Program (ICP). Because BXA does not review each individual transaction authorized by an SCL, in order to be granted an SCL, an exporter must have the mechanisms in place to ensure that each export and re-export made under an SCL meets all the terms and conditions of the license and is in accordance with all applicable provisions of the EAR.

The SCL provides flexibility that allows a company to tailor a license to its individual needs and may authorize a number of activities e.g., servicing, export and re-export of capital equipment, and/or exporting items for the purpose of resale and re-export. To qualify for an SLC, a company's ICP must be customized to each license depending upon the type of activity, items to be exported/reexported, and their destinations. Currently, BXA has authorized thirteen companies to facilitate exports and reexports through an SCL.

International Cooperative Licenses

The Commerce Department is authorized to establish licenses which assist in the effective and efficient implementation of the Export Administration Act (EAA), as described under section 4(a)(4) of the EAA as amended (50 U.S.C.A. app. 2403(a)(4) (1991 and Supp. 1998). Under this authority, BXA establishes U.S. Government-held licenses to fulfill U.S. Government roles in international cooperative projects. The structure and paperwork requirements for these licenses are similar to those for the SLC, and an agency must have an ICP to qualify but the restrictions described in Part 752 of the EAR do not necessarily pertain. Three such licenses currently exist.

Internal Control Programs

An Internal Control Program (ICP) is a mandatory requirement of the SCL and ICL. Each license holder crafts its ICP to ensure that its export and re-export procedures comply with the requirements of the license and the EAR. Elements of the ICP include customer screening, auditing, training and administrative procedures. OEXS revises and distributes ICP Guidelines as well as other tools that can be used by the SCL holders in the implementation of their programs. One such tool is the SCL Holder Review Module that can be used by companies to audit their own programs. Although this Module was developed for the SCL ICP review, it is also used by companies that do not hold SCLs. The ICP Guidelines and the Review Module are available to exporters to download via the Export Management System Compliance page of the BXA's Website.

OEXS counsels exporters and consignees who participate in this procedure to develop

and refine their internal control programs on an ongoing basis. The ICP has been the standard for use by multinational companies worldwide since its implementation in 1985 and is now being requested by other countries to use as a model for establishing similar programs.

Systems Reviews

Section 4 of the EAA requires the Secretary to conduct periodic reviews of all active Special Licenses. The purpose of these reviews is to evaluate the adequacy of the mandatory ICPs implemented by SCL holders and consignees, and to ensure compliance with the EAR and the terms of the license. Systems Reviews are viewed not only as a compliance activity but also as an educational opportunity, since guidance is provided to the SCL holder and consignees at the time of the reviews.

Export Management Systems Guidelines

An Export Management System (EMS) is an optional compliance program that companies may implement as good business practice, in order to ensure compliance with the EAR and to prevent sales to end-users of concern. Establishing an EMS can greatly reduce the risk of inadvertently exporting to a prohibited end-use/user. BXA published the first EMS Guidelines in September 1992. Working with industry, OEXS revised and reprinted the guidelines in Fiscal Year 1997 to assist companies with the establishment of internal procedures for screening exports. Exporters now assume greater responsibility as even decontrolled commodities and technologies may require prior approval from the U.S. government because of concerns over the proliferation of weapons of mass destruction.

The EMS Guidelines include both Administrative and Screening Elements which are beneficial in developing a foundation for a compliance program within an individual firm. The Administrative Elements include: Management Policy, Responsible Officials, Record Keeping, Training, Internal Reviews, and Notification. The Screening Elements include: Denied Persons, Product Classification/License Determination, Diversion Risk, Nuclear, Missile, Chemical & Biological Weapons, Antiboycott Compliance and Is Informed/Entity List. Through the various screening elements and checklists within the Guidelines, companies can develop ways to know their customers. The Guidelines provide suggestions for how exporters can comply with the General Prohibitions described in the EAR. Those prohibitions require that an export license be obtained even when items are eligible for export under various license exceptions and qualify for "No License Required" (NLR) status.

OEXS counsels firms on the development of EMS programs that are customized to their specific business activities. Reviews have taken place in the form of one-on-one counseling and review of draft programs at the Department of Commerce. OEXS now offers on-site EMS reviews of companies' written and operational programs. OEXS also conducts EMS

workshops and seminars to educate the export community about the various tools available to them to assist them in complying with the EAR.

Summary of Systems Reviews

Fiscal Year 1984-88 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 Total

Special Licensing and Compliance Division (SLCD)

Domestic:	282	69	42	52	39	16	9	9	3	1	4	526
Foreign:	88	61	82	24	41	32	19	0	0	0	0	347
Desk:	0	0	6	6	12	0	0	5	1	19	10	29
Total:	370	130	130	82	92	48	28	14	4	20	14	932

Western Regional Office *

Domestic:	0	38	44	33	22	6	3	**	**	**	**	146
Mini:		0	2	4	0	0	0	0	**	**	**	**
WRO Total:	0	40	48	33	22	6	3	**	**	**	**	152

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Total Reviews

Conducted:	370	170	178	115	114	54	31	14	4	20	14	1084
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* Established in 1988

** Discontinued systems reviews, function returned to Special Licensing and Compliance Division

Definitions: "Domestic": 1 or 2 day on-site visit to Special License Holder
 "Foreign": 1 or 2 day on-site visit to the Special License Consignee
 "Desk": Special License Holder, Special License Consignee, and Export Management System reviews conducted by written correspondence
 "Mini": half day on-site visit to Special License Holder