

THE WHITE HOUSE

WASHINGTON

December 10, 1990

NATIONAL SECURITY DIRECTIVE 53

MEMORANDUM FOR THE VICE PRESIDENT
 THE SECRETARY OF STATE
 THE SECRETARY OF THE TREASURY
 THE SECRETARY OF DEFENSE
 THE ATTORNEY GENERAL
 THE SECRETARY OF COMMERCE
 THE SECRETARY OF ENERGY
 DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
 UNITED STATES TRADE REPRESENTATIVE
 CHIEF OF STAFF TO THE PRESIDENT
 ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
 DIRECTOR OF CENTRAL INTELLIGENCE
 DIRECTOR, OFFICE OF SCIENCE AND TECHNOLOGY POLICY
 CHAIRMAN, JOINT CHIEFS OF STAFF
 DIRECTOR, ARMS CONTROL AND DISARMAMENT AGENCY

SUBJECT: Interagency Review and Disposition of Export Control Licenses Issued by the Department of Commerce (C)

American exporters are entitled to prompt review of export license applications submitted to the United States Government. It is United States policy that there is a presumption of approval of such applications based on our commitment to an open international trading system and the need to ensure American competitiveness. Therefore, any U.S. agency that opposes an export license on national security grounds shall bear the burden to overcome this presumption of approval. At the same time, I want to emphasize that none of the changes set forth in this directive are intended in any way to signal a lessening of our determination to weigh cautiously license applications raising potential nonproliferation or broader national security concerns.

To implement this policy, this directive establishes uniform procedures, consistent with applicable law (including, without limitation, the Export Administration Act of 1979, the Atomic

Declassified/Released on: 8-20-96
 under PROVISIONS of E.O. 12958
 by: Special National Security Council
 F89-191

~~CONFIDENTIAL~~
 Declassify on: OADR

~~UNCLASSIFIED~~

53

~~UNCLASSIFIED~~

Energy Act, and the Nuclear Non-Proliferation Act) by which the Department of Commerce (the "Department") will process all export license applications submitted pursuant to the Export Administration Regulations, 15 CFR Sections 770-799. (C)

1. In accordance with Executive Order No. 12002, as amended, the Secretary of Commerce chairs the Export Administration Review Board (EARB), which addresses interagency differences arising out of export license applications reviewed by the Department. (C)

2. The Subgroup on Nuclear Export Coordination (SNEC) shall continue to discharge its responsibilities as required by law. In order to facilitate the interagency evaluation of other nonproliferation cases, by January 1, 1991, the Department of State shall charter working groups for chemical and biological weapons and missile technology. At a minimum, these working groups shall include representatives of all departments and agencies represented on the EARB. The Operating Committee (OC), chaired by the Department of Commerce, shall continue to provide the first level of interagency review for all dual-use cases not related to the possible proliferation of nuclear, chemical, and biological weapons or missile technology. Each working group, including the OC and SNEC, shall be responsible for formulating all analyses related to the cases under its purview that are the subject of this directive. (C)

3. At any time in the processing of a license application, the Assistant Secretary, or an official of comparable rank, of an interested department or agency may obtain review by the National Security Council (NSC) of foreign or national security policy issues (including nonproliferation policy) related to the application by submitting a written request to the appropriate chair of a Policy Coordinating Committee. A copy of such request shall be provided simultaneously to the Assistant Secretary of Commerce for Export Administration. Upon receipt of such a request, the Department shall delay any further action on the license application for a period of 30 days while the policy issue is addressed in the NSC process. The NSC process shall be completed, and a written response to the Department shall be issued on the policy issue within the 30-day period. The issuance of the NSC response or expiration of the 30-day period, whichever occurs first, will end the suspension of any action on the license application. (C)

4. The Department shall continue to refer all license applications requiring interagency review to all appropriate agencies and departments according to agreed procedures. The executive secretary of each working group shall circulate agendas for all meetings of that group to all members of the EARB. Within 90 days of the date of receipt by the Department of an application, the cognizant working group shall recommend that the license be issued or denied, as appropriate, or shall forward the agency positions and all supporting documentation to the OC. The Chair of the OC shall circulate at least once every 30 days to

~~UNCLASSIFIED~~

~~UNCLASSIFIED~~

each agency a list of all license applications pending for 60 days or more from the date of application. (C)

5. The Chair of the OC, as Executive Secretary of the ACEP, shall ensure that the analyses of disputes escalated by the working groups identify the unresolved issues related to the license application and represent the views of the agencies. (C)

6. In the event that no decision to approve or deny a license application is reached within 100 days of submission of the export license application to the Department of Commerce, the Chair of the ACEP will convene a meeting of the ACEP to resolve any differences on the disposition of the export license application. Approval of the license by the ACEP shall require a majority vote. Within five days of the ACEP meeting, the ACEP Chair shall notify the participants of the majority recommended decision. Within ten days of the date of that letter, the head or deputy head of any participating department or agency may request in writing that the Secretary of Commerce convene the EARB to review the ACEP decision. This request shall be binding on the Secretary of Commerce, who may also convene the EARB on his or her own authority to review a decision of the ACEP. If no department or agency seeks review of the recommended decision within such ten-day period, the recommended decision of the ACEP shall become final, and the license granted or denied accordingly. (C)

7. Within 35 days of the ACEP meeting, the EARB shall meet, as necessary, to review the proposed export license application. Approval of the license by the EARB shall require a majority vote. Within five days of the EARB meeting, the Secretary shall notify the participating departments and agencies of the recommended decision pursuant to the EARB meeting. Within ten days of the date of such letter, the head or deputy head of a department or agency participating in the EARB may request that the Secretary of Commerce forward the application to the President for decision or the Secretary of Commerce on his or her own authority may take such action. In either of these cases, the Secretary shall forward the license application and the views of the departments and agencies to the President within 35 days of the EARB meeting. If no department or agency seeks review of the recommended decision within such ten-day period, the recommended decision of the EARB shall become final, and the license granted or denied accordingly. (C)

8. In the event that a dissenting department or agency fails to meet any of the foregoing deadlines for appeal of an ACEP or EARB recommended decision, such agency or department will have waived its objection to the recommended decision. In the event that any deadlines or extensions specified in this NSD for acting upon license applications are not met, for reasons other than pending third party actions on a license application unrelated to the Government's deliberation on that case, the Secretary of Commerce shall inform me in writing of the delay, the reasons for missing

~~UNCLASSIFIED~~

the original or extended deadline, and the date by which disposition of the license is expected. (C)

9. Within 60 days of the date of this directive, the Secretaries of State and Energy, in consultation with relevant departments and agencies, shall issue a notice of proposed rulemaking to bring the procedures of the SNEC into conformity with the procedures outlined in this directive. (C)

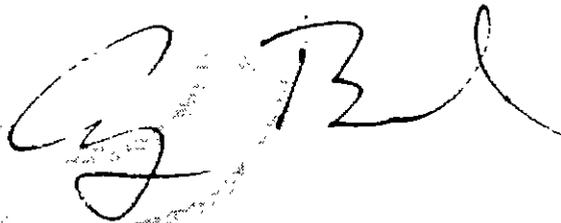
10. The resolution of export license application issues at intermediate levels, e.g., at the Deputy Assistant Secretary or Under Secretary level, is encouraged, but shall not result in extending the time frames specified in this directive. (C)

11. Nothing in this directive shall derogate from the Department's authority to extend deadlines as necessary pursuant to law and regulations. (U)

12. All currently pending license applications shall be brought into conformity with this directive by March 31, 1991. (U)

13. All references to the Secretary of Commerce in this directive shall include the Deputy Secretary of Commerce. (U)

14. I direct that, within six months, the Deputies Committee of the National Security Council shall review and report on the operation of these procedures to the NSC. (C)



A handwritten signature, possibly 'G B L', is written in black ink. It is enclosed within a faint, circular stamp that is mostly illegible due to fading and low contrast.