

OFFICE OF FOREIGN ASSETS CONTROL

BIENNIAL REPORT OF LICENSING ACTIVITIES

PURSUANT TO

THE TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT OF 2000

October 2002 - September 2004

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 2002 through September 2004. On July 12, 2001, OFAC issued 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.

On April 23, 2004, the White House Office of the Press Secretary issued a statement announcing the modification of economic sanctions against Libya. Accordingly, OFAC issued a general license¹ authorizing, as of the effective date of the general license, most transactions otherwise prohibited by the Libya Sanctions Regulations, 31 C.F.R. Part 550 ("LSR"). As of April 29, 2004, specific licenses issued by OFAC for the export of agricultural commodities, medicine, and medical devices to Libya are no longer required under the LSR.²

¹ A general license, set forth in OFAC's regulations, obviates the need for a specific license to undertake the proposed transaction, provided that the transaction falls within the parameters of the general license.

² Effective April 29, 2004, OFAC authorized U.S. persons to engage in most transactions previously prohibited by the LSR, including the exportation and reexportation of goods, software or technology by U.S. persons to Libya or the Government of Libya. This authorization does not, however, eliminate the need to comply with other provisions of law, including the Export Administration Regulations, 15 C.F.R. parts 730 *et seq.*, which are administered by the U.S. Department of Commerce. On September 20, 2004, the President signed Executive Order 13357 (the "E.O.") terminating the national emergency declared in Executive Order 12543 of January 7, 1986, with respect to the policies and actions of the Government of Libya and revoking that order, Executive Order 12544 of January 8, 1986, and Executive Order 12801 of April 15, 1992, all of which imposed sanctions against Libya in response to the national emergency. This E.O. also revoked Executive Order 12538 of November 15, 1985, which prohibited the importation into the United States of petroleum products refined in Libya. The E.O. was effective at 12:01 a.m. eastern daylight time on September 21, 2004. As of that time, the prohibitions of the LSR were lifted, and all property and interests in property blocked under the LSR were unblocked. However, termination of the national emergency will not affect any action taken or proceeding pending not finally concluded or determined as of the effective date of this E.O., any action or proceeding based on any act committed prior to such date, or any rights or duties that matured or penalties that were incurred prior to such date.

OFAC accomplishments in effectively and efficiently administering the TSRA during its second two years of operation included the following:

- ❖ Efficient and innovative electronic processing procedures previously established by OFAC to refer license applications to the State Department for interagency review were reexamined, revised, and refined so that OFAC now refers most complete and eligible license applications the day that OFAC receives the application;
- ❖ The backlog of applications (over 150 in total) that built up at the State Department during the summer of 2002 was cleared up, laying the groundwork for the current effective and efficient framework for processing license applications;
- ❖ Efficient and innovative electronic processing procedures were developed and established by OFAC to process license applications upon receipt of a recommendation from the State Department so that OFAC now issues most licenses within a day of receipt of the State Department recommendation;
- ❖ As of August 2003, in order to improve communication with license applicants, OFAC began issuing acknowledgment letters to license applicants who submit complete and eligible license applications to inform them that their license application has been referred to the State Department for interagency review;
- ❖ In August 2003, the State Department issued a memorandum waiving interagency review for license applications requesting the export of certain agricultural products in which the end-user had been approved by the State Department within the past twelve months. To date, OFAC has issued 85 licenses under this exception to interagency review on average within a day of receipt of the license application; and
- ❖ The average number of business days for the OFAC Licensing Division to issue a licensing determination³ under the TSRA regulations was 42.0 business days (48.2 business days for applications requiring interagency review, 6.3 business days for license applications handled solely by OFAC).

In line with the accomplishments cited above, the majority of complete and eligible license applications⁴ were processed within the established time guidelines for license application review.⁵ (**See Graph 1**) OFAC issued a licensing determination on 92.1 percent of the license applications received during the reporting period, in spite of the increased complexity and length of license applications and the events of September 11, which 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 taken for most cases. As **Graph 2** demonstrates, the average number of business days beyond the initial 30-

³ 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.

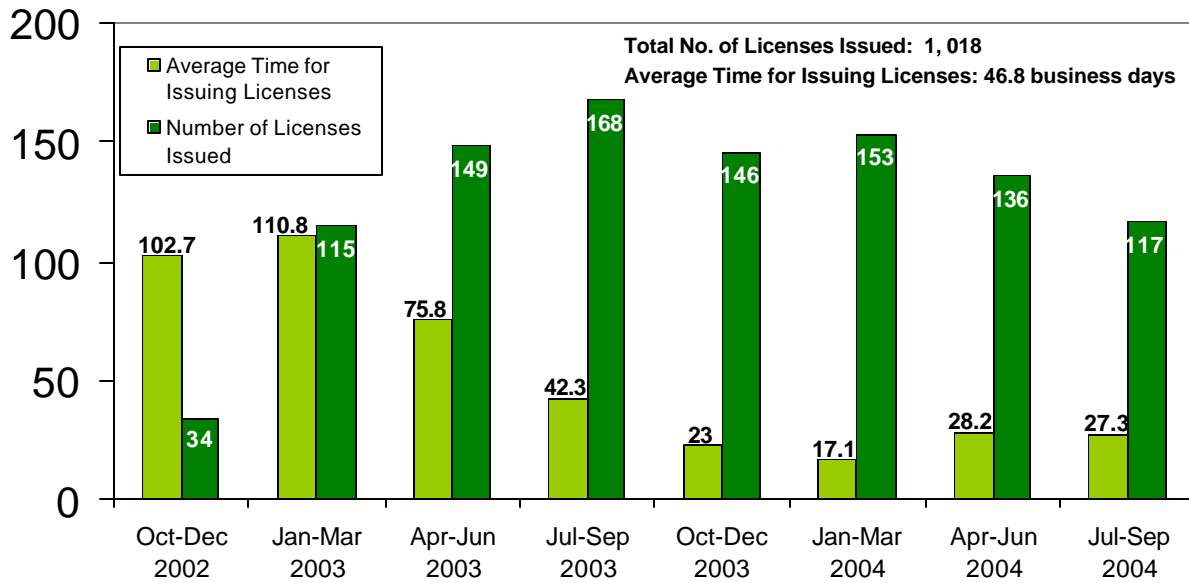
⁴ OFAC's Licensing Division forwards only complete and eligible license applications to the State Department for review.

⁵ *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 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.

day extension and the percentage of cases exceeding the initial 30-day extension **fell considerably** during the reporting period, although these two indicators began to rise again in mid-2004.

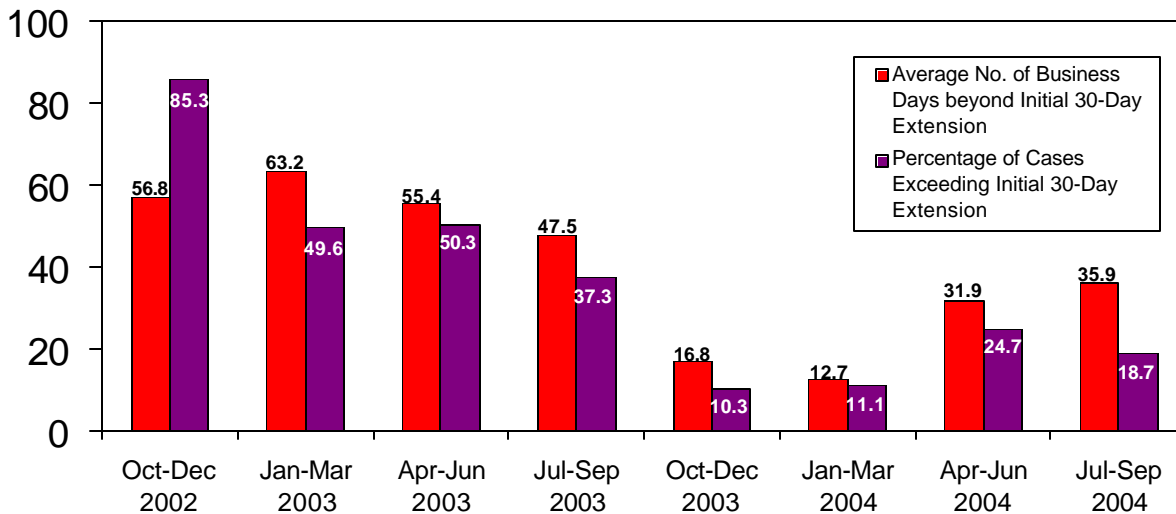
GRAPH 1

**Licenses Issued
(October 2002- September 2004)**



GRAPH 2

**Clearance by Review Agencies
(October 2002 - September 2004)**

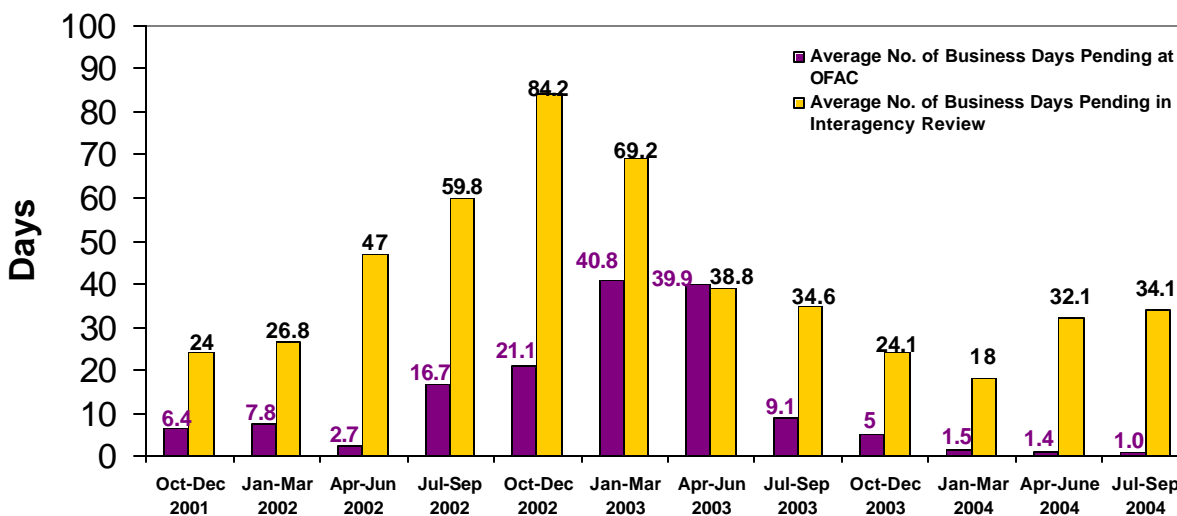


OFAC requires interagency input and clearance to conform to the TSRA requirement that license applications be denied for exports to any entity promoting international terrorism, or for exports “used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.” (TSRA, Section 906(a) and Section 904(2)(C)). Furthermore, interagency input and clearance is needed for entities and items, apart from certain agricultural exports previously referred to, that have previously been licensed, since circumstances and policy objectives may change. The steady increase in license processing times from October 2002 to March 2003 was principally the result of the increased amount of time taken by the reviewing agencies in processing license applications precipitated by the diversion of resources and shifting needs and priorities following the September 11 attacks. (**See Graph 3**) As a result, a backlog developed which is reflected by the increased average licensing times. In late 2002, recommendations concerning a large volume of cases pending interagency review were suddenly dislodged *en masse*. Processing such a large number of cases, many of which had been pending for a lengthy period, caused a spike in the average processing time for that reporting cycle.

Since the spike in average processing time in January – March 2003, we have seen faster processing by the reviewing agencies, and OFAC’s statistics aptly demonstrate that the average license processing time has fallen considerably. As of January 2004, OFAC has consistently operated within its internal time guidelines by using no more 1.33 business days on average (Jan.-Mar. 2004 – 1.50 business days, Apr.-Jun. 2004 -1.37 business days, and Jul.-Sep. 2004 – 1.02 business days) in both forwarding complete and eligible license applications for interagency review, and processing complete and eligible license applications following receipt of a recommendation from the State Department.

GRAPH 3

**Average Number of Business Days Pending:
OFAC and Interagency Review**



II. Program Operation

From October 1, 2002 to September 30, 2004, OFAC’s Licensing Division received a total of 1,480 license applications pursuant to Section 906(a)(1) of the TSRA (See **Appendix 1** for breakdown of data by reporting period). During this period, OFAC issued licensing determinations on 1,362 of the 1,480 license applications. A total of 971 licenses and 47 license amendments⁶ were issued from October 1, 2002 through September 30, 2004 (See **Charts 1 and 2**). On average, licenses and license amendments were issued within 46.8 business days of receipt of the application. Upon completion, 81.9 percent (835 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 38 general information letters (average turnaround: 9.5 business days), 156 “return-without-action” letters (“RWA letters”) (average turnaround: 7.5 business days), and 63 denial letters (average turnaround: 70.0 business days (See **Graphs 4, 5, and 6**). 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 42.0 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.

OFAC’s proposal in 2003 to the State Department for an expedited review process for applications involving agricultural commodities resulted in OFAC’s ability since August 2003 to issue licenses without interagency review where the issuance of a license for the product involved and the end-user had already been reviewed by the interagency process and found to be consistent with the TSRA within the past year. As of September 30, 2004, 85 licenses have been issued under this exception to interagency review on average within a day of receipt of the license application (See **Chart 3**).

CHART 1
Number of License Applications and Licenses Issued by Product

	Agricultural Commodities	Medicine	Medical Devices	TOTAL
License Applications	545	204	731	1,480
Licenses Issued	432	135	404	971
License Amendments Issued	19	2	26	47
Applications Denied	15	11	37	63

⁶ 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.

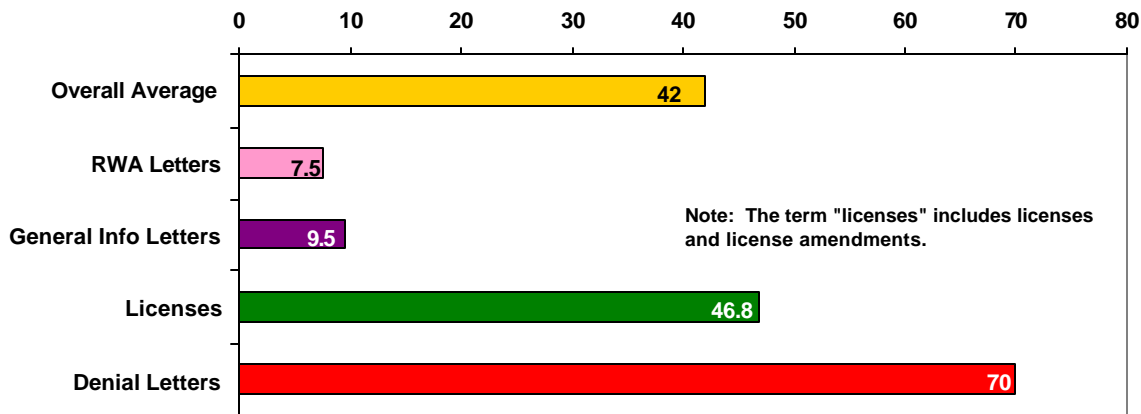
CHART 2
Number of License Applications and Licenses Issued by Country

	Iran	Libya	Sudan	TOTAL ⁷
License Applications ⁷	1,226	136	115	1,480
Licenses Issued	825	82	64	971
License Amendments Issued	41	4	2	47
Applications Denied	55	5	3	63

CHART 3
Number of Agricultural Commodities Licenses Issued per State Waiver and Average Processing Time in Business Days

Reporting Period	No. of Licenses Issued	Average Time for Issuing Licenses
July-September 2003	7	.29
October-December 2003	23	.89
January-March 2004	20	.68
April-June 2004	20	.70
July-September 2004	15	.93
Total and Aggregate Average	85	.75

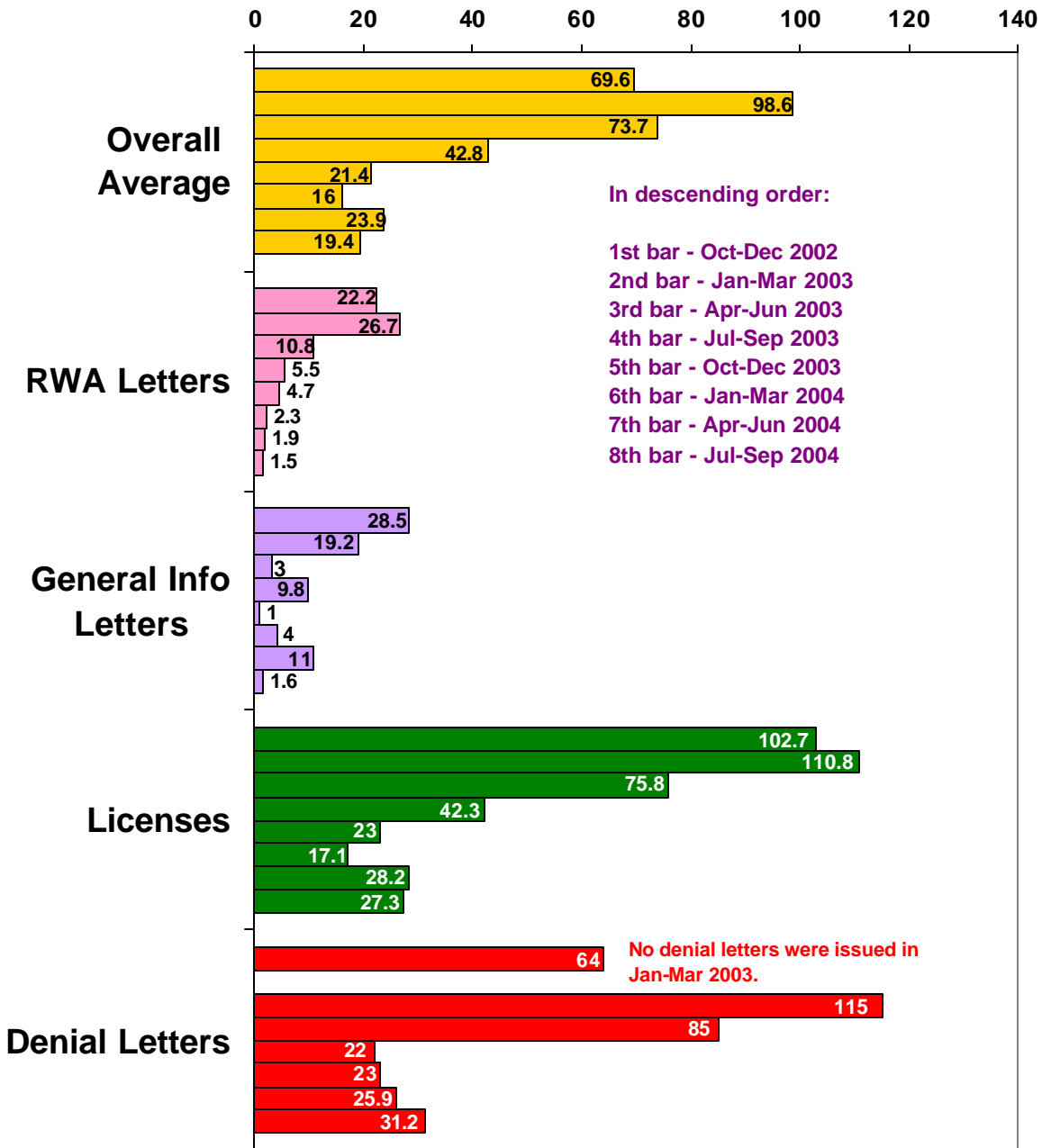
GRAPH 4
Aggregate Average Time for Issuing License Determinations
 (October 2002 - September 2004, in business days)



⁷ OFAC received three license applications for Syria in the Oct.2002 – Sep. 2004 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 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 (“BIS”) is responsible for licensing exports and reexports, including food and medicine, to Syria.

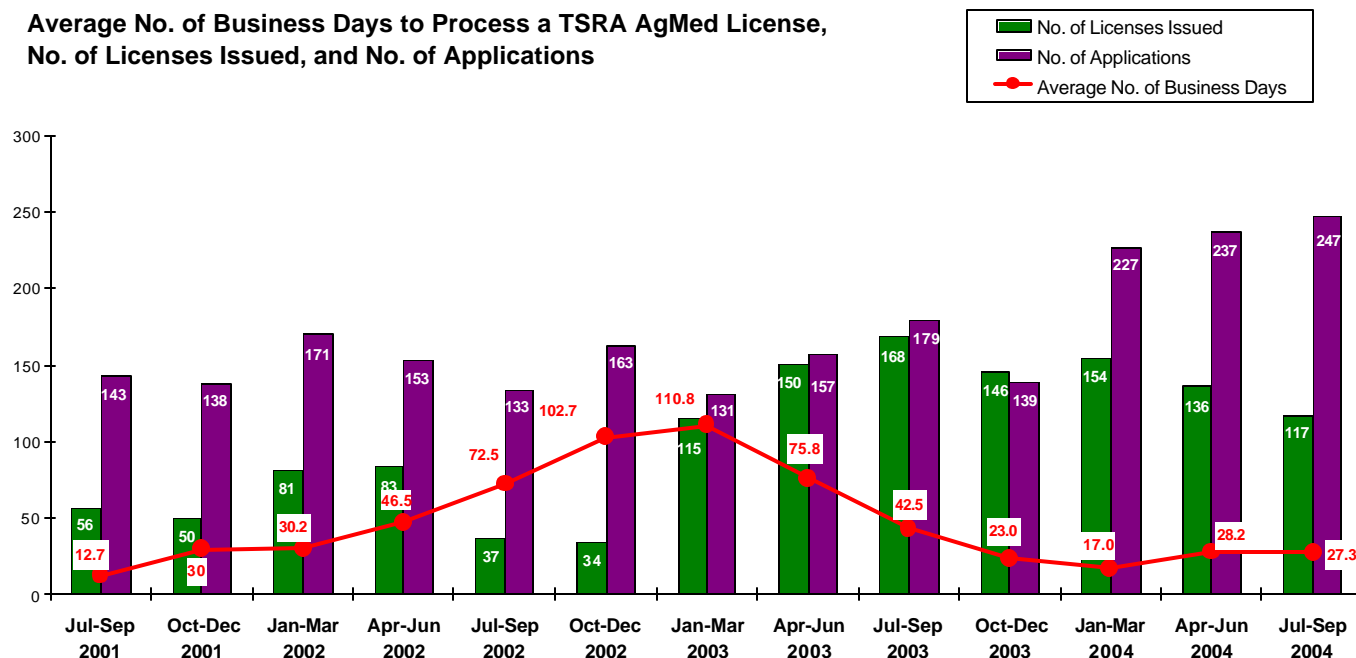
GRAPH 5

Average Time for Issuing License Determinations per Quarter
 (October 2002 - September 2004, in business days)



GRAPH 6

Average No. of Business Days to Process a TSRA AgMed License, No. of Licenses Issued, and No. of Applications



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 August 9, 2004. In contrast with previous requests for comments resulting in a total of 16 submissions, OFAC only received two comments, both from trade associations. While one of the commentators noted that “During the past year, OFAC and the reviewing agencies have made progress in reducing the delays associated with the issuance of licenses to export medicine, medical devices and agricultural commodities under TSRA,” both expressed concern about the delays, developments, and trends within the licensing procedures. One commentator urged that action be taken to redress the following concerns:

- ❖ 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; and
- ❖ Difficulty in obtaining guidance or clarification concerning the scope of licenses issued.

Among the suggestions submitted 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;
- ❖ Develop an automated electronic export license application tracking system;

- ❖ Establish an expedited mechanism for the renewal⁸ of expired one-year licenses;
- ❖ Add additional staff to answer exporters' questions; and
- ❖ Work with the Commerce Department's Bureau of Industry and Security ("BIS") to have BIS's "Illustrative List of EAR99 Medical Devices" updated.

In May 2003, OFAC added three full-time FTE's to the TSRA AgMed Program. Accordingly, the TSRA AgMed Program is now staffed by four full-time FTE's – three licensing officers and one administrative assistant. In order to ensure the continued efficient and effective operation of the 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.

IV. Conclusion

During this two-year period, OFAC has successfully reduced its average processing time of license applications to less than two days, as a result of increased staffing and the efficient and innovative electronic processing procedures that were originally established, reexamined, and later refined by OFAC. Although the average processing time involving interagency review exceeded the established time guidelines for license application review⁵, OFAC is now able to refer license applications to the State Department and issue licenses upon receipt of recommendations from that agency within one business day on average. OFAC remains committed to working closely with the reviewing agencies to improve the licensing procedures and processing times.

⁸ At present, 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.

APPENDIX 1

Summary of TSRA Licensing Activity Data from October 2002 – September 2004

A. License Applications⁹ Received by Commodity and Country

Period	Total No. of Applications	Commodity			Country ⁷		
		Agricultural Commodities	Medicine	Medical Devices	Iran	Libya	Sudan
Oct-Dec 2002	163	57	13	93	138	11	14
Jan-Mar 2003	131	51	14	66	108	11	12
Apr-Jun 2003	157	62	18	77	133	15	9
Jul-Sep 2003	179	76	42	61	152	15	12
Oct-Dec 2003	139	63	15	61	108	20	11
Jan-Mar 2004	227	79	23	125	169	44	14
Apr-Jun 2004	237	82	20	135	201	18	16
Jul-Sep 2004	247	75	59	113	217	2	27
TOTAL	1,480	545	204	731	1,226	136	115

B. Licenses and License Amendments Issued by Commodity and Country

Period	Total No. of Licenses	Commodity			Country		
		Agricultural Commodities	Medicine	Medical Devices	Iran	Libya	Sudan
Oct-Dec 2002	34	25	1	8	25	6	3
Jan-Mar 2003	115	69	15	31	85	14	14
Apr-Jun 2003	149	45	20	84	130	10	9
Jul-Sep 2003	168	77	22	69	149	10	9
Oct-Dec 2003	146	67	33	46	122	15	9
Jan-Mar 2004	153	58	24	71	118	26	9
Apr-Jun 2004	136	58	12	66	123	5	8
Jul-Sep 2004	117	52	10	55	112	0	5
TOTAL	1,018	451	137	430	866	86	66

C. Denial Letters Issued by Commodity and Country

Period	Total No. of Denials	Commodity			Country		
		Agricultural Commodities	Medicine	Medical Devices	Iran	Libya	Sudan
Oct-Dec 2002	2	0	0	2	1	0	1
Jan-Mar 2003	0	0	0	0	0	0	0
Apr-Jun 2003	17	3	4	10	16	1	0
Jul-Sep 2003	20	7	7	6	14	4	2
Oct-Dec 2003	1	0	0	1	1	0	0
Jan-Mar 2004	7	2	0	5	7	0	0
Apr-Jun 2004	10	2	0	8	10	0	0
Jul-Sep 2004	6	1	0	5	6	0	0
TOTAL	63	15	11	37	55	5	3

⁹ The totals for license applications received per reporting period are different from those previously submitted by OFAC because OFAC counts license applications in the reporting period by the date of the license application, not by the date the license application is received by OFAC. For example, for the Oct.-Dec. 2003 reporting period, OFAC reported the total number of cases for the quarter as 118. However, OFAC later received 21 more cases "dated" in the Oct.-Dec. 2003 reporting period; hence the corrected total number of cases for the quarter is 139.