

FEB 08 1979

POOR ORIGINAL

Mr. Thomas R. Pickering
Assistant Secretary of State
Oceans & International Environmental
& Scientific Affairs
Department of State
Washington, D.C. 20520

Dear Mr. Pickering:

On January 10, we forwarded to the Executive Branch a copy of the Commission's recently adopted internal procedures for reviewing export/import license applications submitted to the NRC. An additional copy is attached for your ready reference. In connection with its review of these procedures, the Commission also addressed the possibility of establishing similar internal procedures for reviewing Executive Branch nuclear export activities requiring NRC consultation (e.g., DOE technology exports and subsequent arrangements). The purpose of this letter is to inform the Executive Branch of the NRC staff's views with respect to establishing such internal procedures for these activities when major policy issues are involved and Commission review is warranted. I recognize that DOE and the Commerce Department are the responsible agencies for the activities under consideration, but I am addressing this letter to you in your capacity as the Chairman of the NSC Ad Hoc Group on Nonproliferation since I believe this matter should be subject to broad interagency review.

For routine consultations on Executive Branch export activities, the NRC staff has normally been able to provide its comments within the time period set out in the June 9, 1978 interagency procedures established pursuant to the NNPA. These procedures, in general, allow 30 days for consulting agencies to comment on the final analysis of proposed export activities (20 days for DOE subsequent arrangements). However, for those proposed activities involving significant policy issues, such as laser isotope separation (LIS) related exports and reprocessing retransfers, Commissioner review is required and generally additional time will be needed. The interagency procedures include deadlines which were intended to cover most cases but the procedures also provide for extensions of review times by the responsible agency when circumstances warrant. Based upon our experience to date, it is clear that certain major cases will require such extensions.

As a result of the above considerations, the NRC staff is prepared to recommend that the Commission establish internal deadlines for the review of significant Executive Branch nuclear export activities which would be

OFFICE						
SURNANE						
DATE						

of comparable length to those contained in the attached procedures covering NRC licensed exports. This does not imply that NRC would require extended review times for all significant cases, since the deadlines are intended to be the maximum review times required. For especially urgent cases the Commission will, of course, attempt to respond in time to meet special requirements. For the majority of the remaining cases we would still attempt to respond within the 20 or 30 day time periods, even when Commission referral is required.

The staff intends to submit its views to the Commission within the next month. Please advise me by February 28 whether the Executive Branch agencies have any objections to the approach outlined above and also whether the interagency procedures should be revised to better reflect the considerations discussed in this letter.

Sincerely,

(Signed) Lee V. Gossick

Lee V. Gossick
Executive Director for Operations

Enclosure:
12/29/78 memo, Hendrie
to Gossick/Chilk

cc: Holsey Handyside, DOE
Donald M. Kerr, DOE
Rauer H. Meyer, DOC
Charles VanDoren, ACDA
Sheila Buckley, DOD

bcc: Don Hassell, OCM
George Eysymontt, OCM
John Stephens, OCM
Hugh Thompson, OCM
Vickie Harding, OCM
Trip Rothschild, OGC
Jim Devine, OPE
William Dircks, NMSS
Joanna Becker, ELD
LVGossick
EDO R/F

Secy

POOR ORIGINAL

1119-290

See attached yellow for concurrences

OFFICE	IP	IPEI:AD	IP:AD	EDO	OGC	ELD
SURNAME	MPeterson:plm	GGOplinger	JRShea	LVGossick	b. phue	Broker
DATE	1/31/79	2/2/79	2/1/79	2/7/79	1/31/79	1/25/79



December 29, 1978

POOR ORIGINAL

MEMORANDUM FOR: Lee V. Gossick, Executive
Director for Operations
Samuel J. Chilk, Secretary

FROM: Joseph M. Hendrie, Chairman

SUBJECT: EXPORT/IMPORT LICENSING REVIEW PROCEDURES

Consistent with the Congressional intent manifested in the Nuclear Non-Proliferation Act of 1978, the Commission, without compromising the thoroughness of its review, should make every effort to act upon export/import license applications within 60 days after receiving Executive Branch views. In order to meet this schedule for action, the Commission has informally agreed to the following housekeeping 1/ procedures for internal review of export/import 2/ licenses which are reviewed by the Commissioners:

1. The Director, Office of International Programs (IP), will promptly transmit to the Commission for early review a copy of each export/import application received requiring Commission review. If, after review of the application, a Commissioner has any questions which he wishes to address to the Executive Branch or to the NRC staff, these should be submitted to the Director, IP.
2. The Director, IP, will promptly submit to the Commission, for early review, Executive Branch views on the merits of such applications. 3/ Commissioners will review these views and transmit to the Director, IP, any questions they wish to have addressed by the Executive Branch or the NRC staff.
3. The NRC staff should submit its analysis, and recommendations on such applications to the Secretary for distribution to the Commissioners no later than 40 calendar days after receipt of Executive Branch views. The Secretary shall maintain and keep current a docket of applications pending Commissioner action.

- 1/ These procedures do not create any rights for any person or organization and are not judicially enforceable.
- 2/ Although the Nuclear Non-Proliferation Act does not establish a time schedule for Commission action on import licenses applications, the Commission as a matter of policy has decided to establish a time schedule.
- 3/ The Executive Branch does not provide the Commission views on import license applications.

1119 291 ... 1/3/79 ...

4. After receipt of staff views, Commissioner offices will have five working days to vote 4/ and/or provide views on an application to the Secretariat.
5. This five working day period will be extended not more than an additional four working days at the request of any Commissioner transmitting such a request (either orally or in writing) to the Secretary, prior to expiration of the five day period.
6. Further extensions for individual Commissioner consideration may be granted only by a majority of the Commissioners.
7. After the five-day review period (or the period as extended pursuant to paragraphs 5 or 6, above) has expired, action will be taken on the application only if all Commissioners have voted or if the following conditions apply:
 - (a) if a majority of Commissioners has provided views, and if a majority of Commissioners explicitly votes not to withhold Commission action pending the receipt of views from a Commissioner(s) who has not yet provided views. Once a majority of the Commission has voted to act on the application Commissioners will be provided twenty-four hours notice before the Commission's decision is implemented. Any Commissioner who has not acted upon the item under these circumstances will be recorded as "not participating" in the Commission decision; or
 - (b) if a majority of the Commissioners has provided views, and the statutory time limit set forth in Section 126 of the Atomic Energy Act has expired (the date after which the President may authorize issuance of the license by Executive Order, in the absence of a Commission decision), the majority's decision will be considered that of the Commission, unless a majority of the Commission decides to withhold decision. Any Commissioner who has not provided views by the end of the statutory time limit will be recorded as "not participating" in the Commission decision. Seventy-two hours before the statutory time limit, the Secretary will notify all Commissioners of the impending expiration of time for Commission review. 5/

4/ The term "vote" in this set of working procedures includes a written notation of a Commissioner's position. Because the authority to issue export and import licenses has been delegated to staff personnel subject to Commission oversight, a formal, collegial vote is not necessary.

5/ If the Commission and the Executive Branch conclude that action within the statutory time limit is not possible, the Secretariat will provide a 72-hour notice at the appropriate time.

8. Commission action upon an application will be deferred until responses to any Commissioner questions to the NRC staff or the Executive Branch are received, unless a majority of Commissioners explicitly votes that the Commission should act upon the application prior to the receipt of the requested information. Once a majority of the Commission has voted to act on the application Commissioners will be provided twenty-four hours notice before the Commission's decision is implemented.
9. If action has been deferred pending receipt of responses to questions submitted to the NRC staff or to the Executive Branch, once the response is received Commissioners will be provided five working days to provide views to the Secretary. Further extensions of time may be granted only by a majority of the Commissioners. The procedures outlined in paragraphs 7 and 8, above, will apply in this situation.

cc:
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Commissioner Ahearne
Acting General Counsel
Director, Policy Evaluation
Director, Congressional Affairs
Director, Public Affairs

1119 293