

WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
#1b ltr	Thompson to Bundy S 4 p	2/26/65	A
#2 ltr	Duplicate of #1b		
#3 memo	NSAM 294 S 2 p	4/20/64	A
#8 memo	Duplicate of #3		
#9a memo	Shullaw to Kitchen C 2 p	1/26/65	A
#10a memo	Record of Meeting, 12/30/64 S 2 p	12/31/64	A
#11 memo	Record of Meeting, 12/30/64 S 3 p	1/11/65	A
#12 memo	Kitchen to Bundy C 1 p	1/5/65	A
#12a memo	Attachment to #12 S 3 p	1/4/65	A
#13b memo	Solbert for Record S 2 p	12/31/64	A
#13c memo	Murray for Record S 3 p	12/31/64	A
#14 memo	NSAM 294 S 2 p	12/24/64	A
#14a memo	Klein to Bundy S 1 p	12/24/64	A
#15 rpt	"Technology/Equipment made available..." S 2 p	undated	A

FILE LOCATION

NSAM 294 U. S. Nuclear and Strategic Delivery System Assistance to France  
Box 3

RESTRICTION CODES

- (A) Closed by Executive Order 12356 governing access to national security information.
- (B) Closed by statute or by the agency which originated the document.
- (C) Closed in accordance with restrictions contained in the donor's deed of gift.

WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
<del>#16 memo</del>	<del>Frutkin to Klein S 2 p</del> <i>open 12-14-99</i>	<del>12/21/64</del>	<del>A</del>
#17 memo	Keeny to Bundy S 1 p	12/24/64	A
<del>#19 memo</del>	<del>Foster to Bundy S 1 p</del> <i>open 7/02</i>	<del>12/21/64</del>	<del>A</del>
#20 memo	Friedman to Bundy S 1 p	<del>12/18/64</del>	<del>A</del>
<del>#25 memo</del>	<del>Klein to Bundy</del> <i>open 4/04/08 NLJ 05-109</i> <del>S 2 p</del>	<del>12/12/64</del>	<del>A</del>
#26 rpt	"US Nuclear Export Controls..." C 21 p	12/10/64	A
#27 memo	Thompson to Bundy S 1 p	12/10/64	A
#27a memo	Thompson to Bundy S 5 p <i>exempt NLJ 05-003-6 (7/02)</i>	12/10/64	A
#27c rpt	"Implementation of NSAM 294..." S 16 p	undated	A
#27e rpt	Appendix A to #27c S 9 p	undated	A
#27g rpt	Appendix B to #27c S 3 p	undated	A
<del>#27i rpt</del>	<del>"NSAM 294: Control and Enforcement..."</del> <del>S 7 p</del> <i>open 4-19-06 NLJ 05-108</i>	<del>12/4/64</del>	<del>A</del>
#27q rpt	"US Military Information Control Committee" S 3 p	8/1/64	A
<del>#28 memo</del>	<del>Johnson to Bundy</del> <i>open 7-18-05</i> <del>C 1 p</del>	<del>12/17/64</del>	<del>A</del>

NSAM 294 U. S. Nuclear and Strategic Delivery System Assistance to France

Box 3

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WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
#28a memo	Thompson to Bundy C 1 p	12/9/64	A
#28b memo	Thompson to Bundy C 5 p	12/9/64	A
#30 memo	McNamara to Bundy S 5 p	12/4/64	A
#31 ltr	Palfrey to Hodges S 1 p	12/1/64	A
<del>#32 memo</del>	<del>Rusk to Bundy</del> S 3 p <i>open 4/19/06 NW05108</i>	<del>12/1/64</del>	<del>A</del>
#33 memo	Klein to Bundy S 1 p	11/30/64	A
#34a ltr	Seaborg to Bundy S 2 p	11/23/64	A
#35 rpt	"Summary of Factors involved..." S 4 p	undated	A
#36 memo	Friedman for Record <i>exempt per RAC</i> S 2 p	11/23/64	A
<del>#21 memo</del>	<del>Rowe to Bundy</del> PCI 2 p <i>open 12-14-95</i>	<del>12/17/64</del>	<del>A</del>
<del>#21a ltr</del>	<del>Strickland to Ball</del> PCI 3 p	12/11/64	A
#24 memo	Hodges to Bundy S 3 p	12/14/64	A

FILE LOCATION

**NSAM 294 U. S. Nuclear and Strategic Delivery System Assistance to France**

RESTRICTION CODES

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**NOTE FOR FILE:**

**Folder title was declassified and added to open file 1/30/97  
per R. Greenwell/I. Parra.**

NSAM 294  
Chase

↓

March 9, 1965

Dear Tommy:

I have held your letter of February 26 about NSAM 294 until we could have a first meeting with the two Secretaries on the Gilpatric Report. In the light of our discussion of yesterday, I now think we should clearly go ahead on the basis which is suggested in the memorandum enclosed with your letter. My one additional suggestion is that I hope a White House Staff Officer may also be included in the NSAM Review Group under State chairmanship. I would expect to nominate Spurgeon Keeny for this job.

Sincerely,

15/

McGeorge Bundy

The Honorable Llewellyn Thompson  
Acting Deputy Under Secretary  
Department of State

cc: Messrs. Klein, Keeny, Chas. Johnson

NATIONAL SECURITY COUNCIL

*1a*  
*Bundy*

March 1, 1965

NOTE FOR MR. BROMLEY SMITH

*Staff mtg*  
*Mar*

Brom -- *S*

Mac should see this and decide whether we need another meeting of the NSAM 294 group. I suggest that you put this on the pile of items for Mac to take up with Klein, Keeny and me when he gets dug out. I have sent copies of Tommy's memo to both Klein and Keeny.

*[Signature]*  
C. E. Johnson

~~SECRET~~ Attachment

*L. C. Johnson*  
*2 Ret BKS*

DEPUTY UNDER SECRETARY OF STATE  
WASHINGTON

February 26, 1965

*1-B*

~~SECRET~~

Dear Mac:

You will recall that we had set up a small working group to look into some of the coordination and implementation aspects of NSAM 294. I enclose a preliminary report of the group.

Their findings and views as to continued application of the policy set forth in the NSAM seem to me to square with the consensus reached in the White House meeting of December 30 as recorded in the January 14 memorandum sent to participants in the meeting. We all recognize that we are feeling our way in a singularly complex area, and the approach suggested by the working group is in my view a sound one.

I believe we should proceed along these lines, and plan to ask the other agencies concerned to designate representatives to the Review Group proposed. In the Department of State, general NSAM 294 responsibility will continue to rest with the Deputy Assistant Secretary for Politico-Military Affairs, Mr. Jeffrey C. Kitchen, and he or an officer designated by him will represent the Department on the Review Group.

Sincerely,

*Tommy*  
Llewellyn E. Thompson  
Acting

Enclosure:

Report of Working Group.

The Honorable  
McGeorge Bundy,  
Special Assistant to the President,  
The White House.

DECLASSIFIED

E.O. 13292, Sec. 3.5  
NLJ 05-108

By *isl*, NARA, Date *4-4-06*

~~SECRET~~

*2336*

~~SECRET~~

CONCLUSIONS AND RECOMMENDATIONS OF NSAM 294 WORKING GROUP

Conclusions:

1. The purpose of the policy set forth in NSAM 294 is to use export denial, as one means of achieving effective control over material, equipment and technology which any nation\* seeks to acquire for use in an independent nuclear weapons/strategic delivery vehicle program, and which would significantly benefit such program.

2. Adequate legislative authority and export control mechanisms already exist within the U.S. Government to assure that all items of potential concern in NSAM 294 terms come within the cognizance of the appropriate export licensing authorities, either AEC, State, or Commerce.

3. The tasks of the licensing authorities are therefore (1) to make sure that procedures are in effect which are adequate to identify all proposed export items falling under NSAM 294 and (2) to establish the best possible judgment on the following:

- a. The technical, economic, quality, and timing importance of the item to the national weapons program.
- b. The use actually intended for the item.
- c. The alternative sources outside the U.S. for the item or a comparable substitute.

4. Those items

---

\* In practical terms, the U.K. is at present exempted from this policy, since we are cooperating with that country extensively in both the nuclear weapons and delivery vehicle areas. The policy is also not relevant to Bloc countries, since more stringent policies are governing with respect to them.

~~SECRET~~

~~SECRET~~

- 2 -

4. Those items which are clearly intended for use in a national program, would significantly and directly benefit that program in terms of timing, quality, or cost, and are unavailable in comparable substitute form elsewhere than the U.S. are to be denied.

5. Those items intended for other uses, or of only marginal benefit to the national program, or available elsewhere than the U.S. without undue difficulty or delay, will normally be approved. Other than NSAM 294 considerations may come into play, however (Atomic Energy legislation, Nuclear Test Ban Treaty, political considerations, other U.S. policies, etc.), and individual decisions must take these into account.

6. While NSAM 294 is of general application, France, under her present policies, is the major target country now and for the immediate future. Nevertheless exports to all other countries must be continuously evaluated in terms of both the potential and intention of the recipient country to engage in a national program.

7. No new control mechanisms or formalized inter-agency committees are required, but improved coordination, exchange of views and centralized compilation of case-by-case experience are needed. To the extent feasible, definite lists of commodities and related technologies of importance in NSAM 294 terms should be developed in order to make the controls most effective. The agencies with technical competence in the area are therefore continuing to work on improving present lists. It is recognized, however, that the relative and shifting nature of the NSAM 294 control problem probably means that individual decisions will necessarily continue to be mostly of an ad hoc nature.

Recommendations:

1. Each

~~SECRET~~

~~SECRET~~

- 3 -

1. Each agency concerned (State, Defense, AEC, Commerce, NASA) should name a single senior staff level representative to have general responsibility within that agency for NSAM 294 matters.

2. These representatives should keep in close touch with each other and with all concerned areas within their own agencies, the purpose being to ensure that NSAM 294 cases arising within or referred through normal channels to their agencies get adequate and expeditious consideration under the criteria outlined above.

3. These representatives should also be constituted as an informal NSAM 294 Review Group, meeting under State chairmanship once a month or as necessary, and including additional participation from their own agencies as desirable. The purpose will be to continue to explore ways and means to improve inter-agency coordination, discuss implementation problems which may have arisen, study decisions reached in individual cases of a precedent value or with unusual features, build up a central body of NSAM 294 experience, and make recommendations for change in policy or procedures to their respective agencies as may be required.

4. The intelligence community should be requested to provide the Review Group on a regular basis with evaluations of additional-country potential and intention to engage in nuclear weapons programs, to assist the group in achieving the purpose mentioned in Paragraph 6 above.

~~SECRET~~

NSAM

294

orig.  
C. Johnson

cy Klein

2

~~SECRET~~

FEB 26 1965

Dear Mac:

You will recall that we had set up a small working group to look into some of the coordination and implementation aspects of NSAM 294. I enclose a preliminary report of the group.

Their findings and views as to continued application of the policy set forth in the NSAM seem to me to square with the consensus reached in the White House meeting of December 30 as recorded in the January 14 memorandum sent to participants in the meeting. We all recognize that we are feeling our way in a singularly complex area, and the approach suggested by the working group is in my view a sound one.

I believe we should proceed along these lines, and plan to ask the other agencies concerned to designate representatives to the Review Group proposed. In the Department of State, general NSAM 294 responsibility will continue to rest with the Deputy Assistant Secretary for Politico-Military Affairs, Mr. Jeffrey C. Kitchen, and he or an officer designated by him will represent the Department on the Review Group.

Sincerely,

14

Llewellyn E. Thompson  
Acting

Enclosure:

Report of Working Group.

The Honorable  
McGeorge Bundy,  
Special Assistant to the President,  
The White House.

~~SECRET~~

~~SECRET~~

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~~SECRET~~

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- 2 -

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4. The intelligence community should be requested to provide the Review Group on a regular basis with evaluations of additional-country potential and intention to engage in nuclear weapons programs, to assist the group in achieving the purpose mentioned in Paragraph 6 above.

~~SECRET~~

THE WHITE HOUSE  
WASHINGTON

April 20, 1964

~~TOP SECRET~~

## NATIONAL SECURITY ACTION MEMORANDUM 294

TO: The Secretary of State  
The Secretary of Defense  
The Secretary of Commerce  
The Director of Central Intelligence  
The Administrator, National Aeronautics and  
Space Administration  
The Chairman, Atomic Energy Commission  
The Director, Office of Science and Technology

SUBJECT: U.S. Nuclear and Strategic Delivery System  
Assistance to France

It is the policy of this government to oppose the development of nuclear forces by additional states, other than those whose forces would be assigned as part of a NATO nuclear force, targeted in accordance with NATO plans and, except when supreme national interests were at stake, used only for the defense purposes of the Alliance.

Given current French policy, it continues to be in this government's interest not to contribute to or assist in the development of a French nuclear warhead capability or a French national strategic nuclear delivery capacity. This includes exchanges of information and technology between the governments, sale of equipment, joint research and development activities, and exchanges between industrial and commercial organizations, either directly or through third parties, which would be reasonably likely to facilitate these efforts by significantly affecting timing, quality or costs or would identify the U.S. as a major supplier or collaborator. However, this directive is not intended to restrict unduly full and useful cooperation in non-strategic programs and activities.

~~TOP SECRET~~

DECLASSIFIED  
E.O. 12958, Sec. 3.6  
NLJ 97-137  
By rip, NARA Date 1-28-97

~~TOP SECRET~~

Therefore, the President has directed that effective controls be established immediately to assure that, to the extent feasible, the assistance referred to above is not extended either intentionally or unintentionally.

To this end, specific technical guidance is to be developed and issued at the earliest possible time for the use of the agencies that control the export of equipment and technology, including data exchange arrangements. Responsibility for the development of such guidance, and when necessary the revision of these guidances, will be vested in the Departments of State and Defense, in consultation as appropriate with the Department of Commerce, the Central Intelligence Agency, the National Aeronautics and Space Administration, the Atomic Energy Commission, and the Office of Science and Technology, and under the leadership of the Department of State. The approved guidance documents will be cleared at the White House and issued as technical appendices to this National Security Action Memorandum. Necessary guidance will be requested before specific commitments are made by any agency.

*McGeorge Bundy*

McGeorge Bundy

cc:

Mr. Bundy  
Mr. Klein  
Col. Smith  
Mr. Johnson  
NSC Files

~~TOP SECRET~~

Dispatched 4/21/64

4

THE WHITE HOUSE  
WASHINGTON

April 28, 1964

NOTE TO HOLDERS OF NSAM 294, April 20, 1964

The above referenced National Security Action

Memorandum is downgraded to SECRET.

  
Bromley Smith

Copy for:

- The Secretary of State
- The Secretary of Defense
- The Secretary of Commerce
- The Director of Central Intelligence
- The Administrator, National Aeronautics and  
Space Administration
- The Chairman, Atomic Energy Commission
- The Director, Office of Science and Technology

cc:

- Mr. Bundy
- Mr. Klein
- Col. Smith
- Mr. Johnson
- NSC Files

Dispatched 4/28/64

THE WHITE HOUSE  
WASHINGTON

5

Approved by President

+ Sec/State

+ Sec/Def April 21

---

MB

~~Martha~~

10/20

~~also~~

~~BKS to call Dick Davies (S/S)~~

~~you to call Mr Debevoise~~

*Commerce*  
Florence said Mr Thaw made 4 copies of  
NSAM 294 from the copy the Secy of  
Commerce received.

mz

copy sent Gilpatrick

Dec. 2, 1964.

7

mjb

**DECLASSIFIED**

**E.O. 12958, Sec. 3.6**

**NLJ 97-137**

**By sig, NARA Date 1-28-97**

THE WHITE HOUSE

WASHINGTON



8

April 20, 1964

~~Secret~~

~~TOP SECRET~~

**NATIONAL SECURITY ACTION MEMORANDUM 294**

**TO:** ~~The Secretary of State~~  
The Secretary of Defense  
~~The Secretary of Commerce~~  
~~The Director of Central Intelligence~~  
~~The Administrator, National Aeronautics and Space Administration~~  
The Chairman, Atomic Energy Commission  
The Director, Office of Science and Technology

**SUBJECT:** U.S. Nuclear and Strategic Delivery System  
Assistance to France

It is the policy of this government to oppose the development of nuclear forces by additional states, other than those whose forces would be assigned as part of a NATO nuclear force, targeted in accordance with NATO plans and, except when supreme national interests were at stake, used only for the defense purposes of the Alliance.

Given current French policy, it continues to be in this government's interest not to contribute to or assist in the development of a French nuclear warhead capability or a French national strategic nuclear delivery capacity. This includes exchanges of information and technology between the governments, sale of equipment, joint research and development activities, and exchanges between industrial and commercial organizations, either directly or through third parties, which would be reasonably likely to facilitate these efforts by significantly affecting timing, quality or costs or would identify the U.S. as a major supplier or collaborator. However, this directive is not intended to restrict unduly full and useful cooperation in non-strategic programs and activities.

~~TOP SECRET~~  
~~Secret~~

Logged 4-28-64

Downgraded per  
Memo dtd 4-25-64

~~Secret~~  
~~TOP SECRET~~

- 2 -

Therefore, the President has directed that effective controls be established immediately to assure that, to the extent feasible, the assistance referred to above is not extended either intentionally or unintentionally.

To this end, specific technical guidance is to be developed and issued at the earliest possible time for the use of the agencies that control the export of equipment and technology, including data exchange arrangements. Responsibility for the development of such guidance, and when necessary the revision of these guidances, will be vested in the Departments of State and Defense, in consultation as appropriate with the Department of Commerce, the Central Intelligence Agency, the National Aeronautics and Space Administration, the Atomic Energy Commission, and the Office of Science and Technology, and under the leadership of the Department of State. The approved guidance documents will be cleared at the White House and issued as technical appendices to this National Security Action Memorandum. Necessary guidance will be requested before specific commitments are made by any agency.

*McGeorge Bundy*  
McGeorge Bundy

cc:

Mr. Bundy  
Mr. Klein  
Col. Smith  
Mr. Johnson ✓  
NSC Files

*R. Rumsfeld - Budget*  
*Mr. Hall - 4/23*  
*State Council 5/21*

~~Secret~~  
~~TOP SECRET~~

*cy in French  
copy file*

*Dispatched 4/21/64*

THE WHITE HOUSE  
WASHINGTON

F 9  
5

Bronck, Smith

Here is the State memo  
on Canadian NSAM 294  
problems --- I will  
be watching this

RCB

NATIONAL SECURITY COUNCIL

✓

SECRET

December 31, 1964

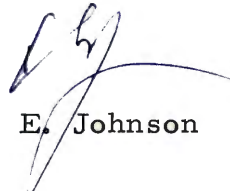

10

MEMORANDUM FOR MR. BUNDY

Mac --

Here is a draft memorandum for the file capturing what we thought were the principal conclusions to be drawn from the discussion at yesterday's meeting. From this record and subsequent discussions with you, the appropriate replies can be prepared for the outstanding memoranda from Dr. Seaborg and Ambassador Thompson to which replies are needed.

OK  
my  
Keeny  
informed  
1/4/65

  
C. E. Johnson  
  
S. M. Keeny

SECRET

This document regraded  
as UNCLASSIFIED when  
separated from attachment.

MEMORANDUM FOR THE RECORD OF MEETING  
IN THE SITUATION ROOM, DECEMBER 30, 1964, 11:00 A. M.

PRESENT: Bundy, Keeny, C. Johnson - NSC; Fubini, Solbert, Howard, Murray - DOD; Thompson, Tyler, Meyers, George, Kitchen, Margrave, Beigel - State; Palfrey, Kratzer - AEC; Fisher - ACDA; Lewis - Commerce; Frutkin - NASA.

The meeting was called for a general discussion of a number of matters relating to NSAM 294 on which decisions are pending in the White House. The following was tentatively agreed upon:

(1) NSAM 294

The present NSAM should be redrafted along the lines of the new draft dated December 24 circulated by Klein to the various interested agencies for comment. The revised NSAM will be generalized by deleting any reference to France and making the policy applicable to all governments seeking the development of independent nuclear forces.

(2) Technical guidance for the implementation of NSAM 294

The working group should proceed to resolve the remaining inter-departmental differences on the technical guidances for the implementation of NSAM 294 with a view to their early issuance.

(3) Test Ban Treaty -- Export control procedure

The State Department proposal for the issuance of a new regulation in the Federal Register establishing export control procedures to implement the Test Ban Treaty should be carried out immediately along the lines of the December 9 Thompson to Bundy memorandum.

(4) Computers for France

Although helpful to the French weapons program, the CDC 3600 would not represent a new capability since the same facilities already exist in France and are being used part time for weapons work. The problem is aggravated, however, by the fact that this computer is intended for the French weapons laboratory. If it were not being purchased by the weapons laboratory, it appears possible that an export license could be issued. The IBM 360-90 represents a major step forward in computer technology and cannot be duplicated from any other

DECLASSIFIED

E.O. 13292, Sec. 3.5

NLI 05-109

By sol, NARA, Date 10-29-07

source for many years to come. It would be of great value to the French in the development of sophisticated nuclear weapons and does not appear to be needed for other non-military applications. The export of the IBM 360-90 to the French therefore appears inconsistent with existing U. S. policy.

(5) U-235 for the prototype submarine nuclear propulsion plant

The denial of this supply of U-235 appears marginal in its impact on the development of French nuclear submarines. This shipment is in partial fulfillment of an agreement of long standing. Although the agreement was entered into when the French were proposing to build a hunter-killer nuclear submarine and today they clearly propose to build a Polaris-type submarine, the circumstances were judged as not being sufficiently different to justify repudiation of the agreement with all its attendant implications for U. S. relationships with the French. However, it was suggested that, in approving the transfer, we make it clear that we do not believe the French are carrying out the agreement on the terms we understood and that we would probably not approve the next transfer. It was noted that the U-235 furnished under the cooperation agreement is fully covered by U. S. safeguards and inspection and the material cannot be diverted to weapons without a flagrant violation of the agreement and an overt action on the part of the French Government.

(6) Plutonium for Euratom

It was agreed that the contract for the sale of plutonium to Euratom should be held up until the Gilpatric panel had had an opportunity to discuss the problem with the principals involved in the decision. The question has been raised as to whether we have adequate inspection rights with regard to Euratom, and the suggestion has been made that the sale/provide leverage in obtaining these inspection rights at the meeting with Euratom to be held in January or February.

CEJ

SMK

January 11, 1965

~~SECRET~~

MEMORANDUM FOR THE RECORD OF MEETING  
IN THE SITUATION ROOM, DECEMBER 30, 1964, 11:00 A. M.

PRESENT: Bundy, Keeny, C. Johnson - NSC; Fubini, Solbert, Howard, Murray - DOD; Thompson, Tyler, Meyers, George, Kitchen, Margrave, Beigel - State; Palfrey, Kratzer - AEC; Fisher - ACDA; Lewis - Commerce; Frutkin - NASA.

The meeting was called for a general discussion of a number of matters relating to NSAM 294 on which decisions are pending in the White House. The following was tentatively agreed upon:

(1) NSAM 294

While no general policy statement was enunciated, the specific case decisions arrived at would indicate a continued selective implementation of the NSAM 294 policy at about the present level of restrictiveness. There is to be a careful case-by-case approach aimed at identifying and denying only those things which would clearly and unmistakably give significant direct assistance to achieving a national nuclear weapons and strategic delivery vehicle capability. The present NSAM will be redrafted, eliminating direct reference to France or other named countries and making it applicable to all governments seeking the development of independent nuclear forces.

(2) Technical guidance for the implementation of NSAM 294

The working group should proceed to resolve the remaining inter-departmental differences on the technical guidances for the implementation of NSAM 294 with a view to their early issuance.

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E.O. 13292, Sec. 3.5  
NJ 05-109  
By isl, NARA, Date 10-29-07

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PRESERVATION COPY

intended for the French weapons laboratory. If it were not being consigned to the weapons laboratory, it appears possible that an export license could be issued. On the other hand, the IBM 360-90 represents a major step forward in computer technology and cannot be duplicated from any other source for many years to come. It would be of great value to the French in the development of sophisticated nuclear weapons and does not appear to be needed for other non-military applications. The export of the IBM 360-90 to the French therefore appears inconsistent with existing U. S. policy.

(5) U-235 for the prototype submarine nuclear propulsion plant

The denial of this supply of U-235 appears marginal in its impact on the development of French nuclear submarines. The shipment is in partial fulfillment of an agreement of long standing. Although the agreement was entered into when the French were proposing to build a hunter-killer nuclear submarine and today they clearly propose to build a Polaris-type submarine, the circumstances were judged as not being sufficiently different to justify repudiation of the agreement with all its attendant implications for U. S. relationships with the French. However, it was suggested that, if the transfer is approved, we make it clear that we do not believe the French are carrying out the agreement on the terms we understood and that we would probably not approve the next transfer. It was noted that the U-235 furnished under the cooperation agreement is fully covered by U. S. safeguards and inspection and the material cannot be diverted to weapons without a flagrant violation of the agreement and an overt action on the part of the French Government.

(6) Plutonium for Euratom

It was agreed that the contract for the sale of plutonium to Euratom should be held up until the Gilpatric panel had had an opportunity to discuss the problem with the principals involved in the decision. The question has been raised as to whether we have adequate inspection rights with regard to Euratom, and the suggestion has been made that the sale might provide leverage in obtaining these inspection rights at the meeting with Euratom to be held in January or February.

(7) GE-1 Engine

It was agreed that the General Electric Company should be allowed to offer their lightweight GE-1 jet engine to the French for use in a French trainer/fighter aircraft (like our F-5). These engines and the advanced technology in them are not clearly and unmistakably to be used for French strategic programs.

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- 3 -

(8) KC-135 Communication System

It was agreed that the DOD recommendation to prohibit Collins Radio from selling communication equipment for the French KC-135's be reversed.

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DEPARTMENT OF STATE  
WASHINGTON

C. Johnson  
cy Klein  
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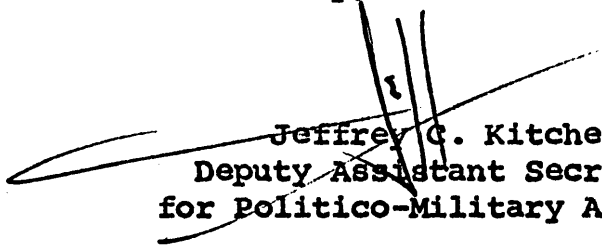
JAN 5 1965

CONFIDENTIAL

Dear Mac:

Pete Solbert has sent me a copy of his recent note to you, transmitting for your review the memoranda prepared by Dr. Fubini and himself after the NSAM 294 meeting December 30. In this connection, it may be useful to you to see a similar State account of the meeting. I therefore enclose a copy of a memorandum prepared in my office, which sets forth our understanding of the decisions reached.

Sincerely,

  
Jeffrey C. Kitchen  
Deputy Assistant Secretary  
for Politico-Military Affairs

Enclosure:

Memorandum for the Record,  
dated January 4, 1965.

The Honorable  
McGeorge Bundy,  
Special Assistant to the President,  
The White House.

CONFIDENTIAL

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Downgraded at 12 year  
intervals; not  
automatically declassified

DECLASSIFIED  
E.O. 13292, Sec. 3.4  
State Dept. Guidelines  
By jc, NARA, Date 7-18-05

12a

G/PA

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MEMORANDUM FOR THE RECORD

January 4, 1965

SUBJECT: Decisions Taken in White House Meeting  
December 30, 1964

The meeting was called by Mr. McGeorge Bundy to consider NSAM 294 and related export licensing problems. Present were Messrs. Keeney and Johnson of Mr. Bundy's staff and the following: Defense (Fabini, Howard, Solbert, Murray); AEC (Palfrey, Kratzer); ACDA (Fisher); NSAS (Futkin); Commerce (Lewis); and State (Thompson, Tyler, Kitchen, Hargrave, Meyers, Seigel, George).

The meeting had the following results:

1. General Approach to NSAM 294 Export Control

While no general policy statement was enunciated, the specific case decisions arrived at would indicate a continued selective implementation of the NSAM 294 policy at about the present level of restrictiveness. There is to be a careful case-by-case approach aimed at identifying and denying only those things which would clearly and unmistakably give significant direct assistance to achieving a national nuclear weapons and strategic delivery vehicle capability. It is the intention to redraft the present NSAM, eliminating direct reference to France or other named countries.

2. Computers

It was agreed that some qualitative line must be drawn in the field of computer export. In view of the

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NLJ 05-108  
By isl, NARA, Date 4-4-06

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- 2 -

CDC 3600 characteristics, the computer capability France already has, and availability of comparable equipment from foreign sources, export of the CDC 3600 is permissible. It should not be sold directly to a French weapons laboratory, however, for reasons having to do both with the Test Ban Treaty and NSAM 194. Other purchase arrangements are therefore to be suggested informally to the American company. There will be no objection if the French CEA as such acquires the computer, provided it does not go into a weapons laboratory.

No final agreement on the IBM 360-91 computer was reached, but the consensus was that the proposed export probably should not be permitted, because the computer stands at the very forefront of technology in the field, there is nothing comparable available from foreign sources, and it would undoubtedly contribute significantly to French acquisition of sophisticated nuclear weapons. It was pointed out during the discussion that there is no known commercial, industrial or other non-military use that could reasonably be made of a computer of this complexity, and that all present orders are for the U.S. Government.

### 3. U-235 for French Submarine Prototype Reactor

It was agreed that delivery of the requested 63 kilograms of enriched U-235 should be made. The reason is essentially that a commitment was made to the French in 1959 and we should live up to it for political reasons.

(NOTE: There was some discussion of the advisability of our telling the French that this had been a very difficult decision for the U.S. Government to make and that any request for additional delivery under the agreement would be even more difficult and perhaps impossible for the U.S. Government to meet. The AEC participants in the meeting consider that it

was agreed

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was agreed some such notification should be given the French. The State participants consider that the discussion did not culminate in agreement on this point.)

4. Collins Communications Equipment

It was agreed that there is no need to take denial action in a case presently before Commerce involving export of Collins ground-to-air communications equipment for use with KC-135's which we have sold to France.

5. Fuel for B-57D

This subject was not discussed to any extent but Mr. Bundy stated that the Gilpatric Committee is very much interested in the question of adequacy of safeguards over the plutonium in question and wishes to take the matter up with the Disarmament Principals on January 7. He asked that this information be passed to Secretary East.

G/PA:George:fa

cc: Ambassador Thompson

E-Mr. Road

U - Mr. Anderson

M - Mr. Chapin

WE - Mr. Helgel

R/MC - Mr. McFadden

G/PA - Mr. Kitchen

- Mr. Meyers

MC - Mr. Margrave

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1 C. Johnson

→ will you see that

Keeny & Klein get

copies?

BKS



2. Ret BKS.



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ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D. C. 20301

13a

31 December 1964

INTERNATIONAL SECURITY AFFAIRS

Dear Mac:

I have not been in on the past NSAM 294 discussions, but some of those that have here in Defense felt that last Wednesday's meeting indicated some modifications of what Defense understood to be prior policies under the NSAM. Accordingly, I am sending you herewith a copy of my Memorandum of Conversation and that of Gene Fubini.

I would appreciate it if your people could review these memoranda to see if we are on the right track.

Sincerely,  
*Peter Solbert*  
Peter Solbert  
Acting

Honorable McGeorge Bundy  
The White House

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2758

REDRAFT - UNAPPROVED

December 24, 1964

~~SECRET~~

NATIONAL SECURITY ACTION MEMORANDUM 294

TO:           The Secretary of State  
               The Secretary of Defense  
               The Secretary of Commerce  
               The Director of Central Intelligence  
               The Administrator, National Aeronautics and  
                   Space Administration  
               The Chairman, Atomic Energy Commission  
               The Director, Office of Science and Technology

SUBJECT:   U.S. Nuclear and Strategic Delivery System Assistance

It is the policy of this government to oppose the development of nuclear forces by additional states, other than those whose forces would be assigned as part of a NATO nuclear force, targeted in accordance with NATO plans and, except when supreme national interest were at stake, used only for the defense purposes of the Alliance.

It is therefore this government's intention not to contribute to or assist in the development of nuclear warhead capability or national strategic nuclear delivery capacity by such additional states. This affects exchanges of information and technology between the governments, sale of equipment, joint research and development activities, and exchanges between industrial and commercial organizations, either directly or through third parties, which would be reasonably likely to facilitate efforts by significantly affect timing, quality or costs or would identify the U.S. as a major supplier or collaborator. However, this directive

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 E.O. 12958, Sec. 3.5

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NSC Memo, 1/30/95, State Dept. Guidelines

NARA, Date 12-14-99

~~CONFIDENTIAL~~

is not intended to restrict unduly full and useful cooperation in non-strategic programs and activities, unless otherwise limited.

Therefore, the President has directed that effective controls be established immediately to assure that, to the extent feasible, the assistance referred to above is not extended either intentionally or unintentionally.

To this end, specific technical guidance is to be developed and issued at the earliest possible time for the use of the agencies that control the export of equipment and technology, including data exchange arrangements. Responsibility for the development of such guidance, and when necessary the revision of these guidances, will be vested in the Departments of State and Defense, in consultation as appropriate with the Department of Commerce, the Central Intelligence Agency, the National Aeronautics and Space Administration, the Atomic Energy Commission, and the Office of Science and Technology, and under the leadership of the Department of State. The approved guidance documents will be cleared at the White House and issued as technical appendices to this National Security Action Memorandum. Necessary guidance will be requested before specific commitments are made by any agency.

McGeorge Bundy

~~SECRET~~

*in connection with NSAM 294*  
12/20/64  
on NSAM 294

December 24, 1964

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McGB-

SUBJECT: NSAM 294

The attached papers are intended for your Christmas reading and in preparation for the 294 meeting scheduled for next Tuesday.

Tab A contains the first technical appendices called for by the original NSAM. It has two covering memos signed by Thompson - one, the basic document, coordinated within the government, which raises technical questions (see page 3, para. D.) and asks for political guidance; two, a Thompson piece, evidently a personal note, calling for the narrowest interpretation of the NSAM because of the economic and political issues raised.

Tab B is a paper sent by NASA, originally advertised as a dissent to the "coordinated" Thompson memo, but clearly not quite of that character.

Tab C is the revised NSAM 294 eliminating all references to France. This is being circulated to the interested offices for comments, suggestions, etc.

David Klein

Attachments

DECLASSIFIED  
E.O. 12958, Sec. 3.5  
NSC Memo. 1/30/95, State Dept. Guidelines  
By *ry*, NARA, Date 12-14-99

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This document contains of  
2 pages, No. 1 of 4  
copies, Series A."

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
WASHINGTON, D.C. 20546

16

IN REPLY REFER TO:

DEC 21 1964

MEMORANDUM FOR Mr. David Klein  
National Security Council  
White House

Subject: Comments on Department of State memorandum  
dated December 10, 1964, on NSAM 294

This is further to our telephone conversation earlier this  
week and provides comments requested by you.

I have expressed some concern that the many questions  
raised in the subject memorandum might prompt the con-  
clusion that a workable solution to implementation of the  
NSAM 294 is not in prospect.

In fact, I believe that a reasonable approach to the com-  
plex problem is in view and that the necessary elements  
for this are at hand. In particular, the measure of  
agreement reached between DOD, Department of State, and  
NASA on the NSAM 294 implementing document is most en-  
couraging.

Our understanding is that the NSAM is basically a re-  
affirmation of long-standing policy. However, it pro-  
vides a long-needed opportunity to sharpen criteria and  
procedures for export approvals or rejections. There  
appears to have emerged among DOD, NASA, State, and AEC  
a consensus that the policy restrictions should be  
directed to critical elements of delivery systems where  
they are intended to assist existing delivery develop-  
ment programs.

I do not see that there needs to be a significant question  
as between Department of State and Department of Commerce  
responsibility in this regard. The essential technology  
which is under consideration is of a character which is  
or should be on the Munitions Control list and therefore  
falls clearly to the Department of State. NASA and DOD

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Authority NASA Guidelines  
By ref NARA, Desc 12-14-99

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are well along in defining categories of systems and subsystems which should be subject to restriction. I would strongly endorse Dr. Fubini's view that we should extend ourselves only to the next layer of critical componentry serving these systems and subsystems, providing to the Department of Commerce a listing of such critical items for its use in cases which do not directly involve the Munitions list.

I do believe that there are certain additional procedures which could materially assist in the implementation task. Most important, I believe that the Munitions Control Board should institute a system of informal hearings which might be invoked by any of the agencies in a given case believed by it to be critical to the development of precedents and policy. Upon such notice, Mr. Margrave would chair an informal session at which the petitioning contractor would be invited to present facts and answer questions regarding his export request, its purpose, and user, etc. The process would permit the participating agencies to arrive at a common understanding of the problem before them. It would then be possible to concert among the government agencies for the purpose of arriving at appropriate recommendations. These would constitute the content of supplementary material for the implementing document. (The current NASA/DOD understanding on the implementing document regards the present listing of categories as tentative, to be developed and refined through a "case" law.)

This prompts a further suggestion for procedural improvement, namely, that the Munitions Control Board publish regularly (monthly) its rulings in the form of a kind of index for the use of the technical agencies and for possible distribution in an appropriate form to industry. This device would also ensure that the Departments of State and Commerce are fully informed of each other's actions.

Certain other procedural considerations would be worth further study, for example, a contractor disclosure requirement and a monitoring and penalty system.

*Arnold W. Frutkin*

Arnold W. Frutkin  
Assistant Administrator  
for International Affairs

cc:  
Mr. Robert Margrave  
Mr. Howard Meyers  
Mr. Ronald M. Murray

~~SECRET~~



## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

WASHINGTON 25, D.C.

*C. Johnson*  
18

OFFICE OF THE ADMINISTRATOR

The President  
The White House  
Washington, D. C.

Dear Mr. President:

This letter is to review developments in our bilateral cooperation with the Soviet Union in outer space matters since my letter to you of June 29, 1964. That letter, prepared in compliance with National Security Action Memorandum No. 285, reported the negotiation of a Second Memorandum of Understanding and a Protocol (June 6, 1964) providing for (1) further implementation of the existing bilateral Agreement, particularly with regard to the establishment and use of a communications link for exchange of weather data, and (2) new cooperation in the preparation and publication of a major review of space biology and medicine in the US and USSR. In addition, the letter reviewed Soviet performance and attitudes and, conditional on Soviet demonstration of a desire to fulfill existing commitments, recommended that the United States adopt as positive an approach toward the next confrontation between Dr. Dryden and Academician Blagonravov as national program requirements would permit.

The Second Memorandum of Understanding, agreed at Geneva on June 6, was to go into effect if neither side took exception to its provisions by July 6. We had no substantive changes to suggest but did request the correction of some editorial discrepancies between the English and Russian texts. Academician Blagonravov wrote that the Soviets could not accept certain provisions of the Memorandum relating to the joint review of space biology and medicine. These were the provisions for parallel chapters by Soviet and American authors, each reviewing the work done in his own country. Instead, the Soviet side reverted to its initial position at Geneva that either Soviet or American authors undertake to review the work of both sides on various subjects. Dr. Dryden proposed continued discussion of the space biology and medicine project in New York during the October meetings of the

United Nations Committee on the Peaceful Uses of Outer Space. Blagonravov accepted this suggestion.

Although he agreed readily to continued discussion, Blagonravov failed to confirm acceptance of the editorial changes necessary to establish the status of the remaining sections of the Second Memorandum. We insisted that such confirmation was necessary before the United States could consider in effect those sections of the Second Memorandum of Understanding which provide for the exchange of magnetic field and conventional meteorological data. The necessary assurances came by telegram on October 23, thus clearing the way for the exchange of conventional data over the communications link established under the Protocol of June 6.

With the interested agencies concurring, Dr. Dryden decided that should the Soviets, in the October meeting, maintain their opposition to parallel reviews of space biology and medicine, he would propose as a compromise that Soviet and American specialists prepare and submit equivalent background material for each agreed chapter. With this raw material in hand, a Joint Editorial Board would assign to a single author, either Soviet or American, the actual task of preparing each chapter for publication. This procedure would satisfy the American concern that there be an equivalent exchange of data; it would assure the availability of Soviet data to American authors; and it would meet the Soviet objection to parallel chapters.

In addition, Dr. Dryden proposed an exchange of visits by expert teams to deep space tracking stations and an exchange of data which might result from 1964 Mars missions.

In the New York meeting, the agreed portions of the Second Memorandum of Understanding were signed on November 5 and submitted through the respective Missions to the UN to the Secretary-General of the United Nations. No agreement was reached on the space biology and medicine project. The Soviets rejected the American compromise proposal and continued to insist that authors be assigned at once without any assurance that Soviet data would be made available to American authors and, indeed, with no mechanism for making it available. Dr. Dryden explained that the United States position was flexible in detail but that no agreement would

be possible that did not provide a sound prospect of an exchange of equivalent data. The American representatives offered to elucidate their position in writing for further Soviet consideration, and this has since been done by means of a Dryden-to-Blagonravov letter of December 2.

Blagonravov accepted in principle the proposal for an exchange of visits to deep space tracking stations but suggested that the detailed arrangements be left to correspondence. Dr. Dryden has since pursued this suggestion in a letter of December 8, outlining a plan for reciprocal visits by Soviet and American teams to the stations at Goldstone, California, and at Yevpatoriya in the Crimea. With regard to our proposal for an exchange of data gained from 1964 Mars missions, Blagonravov replied that the Soviets would be willing to exchange data if they should fly Mars missions and these should be successful.

On several occasions during the course of the discussions, the Soviets expressed an interest in exchanging information on closed ecological systems. Dr. Dryden informed them that we stood ready to consider any specific proposals that the Soviets wished to make.

Our experience since June suggests that the Soviets are willing to cooperate in a generalized and limited way, but that they remain relatively inflexible with respect to commitments in negotiation and are laggard in execution. Their performance does not seriously reflect the assurances recently offered by Academician Keldysh and Foreign Minister Gromyko that the Soviet Union is receptive to expanded cooperation in space research.

We shall continue to examine our developing program for possible opportunities for cooperation with the Soviet Union. For the immediate future, it might be useful to convey to top Soviet leadership, as opportunity affords, our dissatisfaction with the painfully slow and limited progress to date, as well as with Soviet reluctance to enter into reasonable arrangements for implementing agreements. It may be that Soviet leadership does not know of these limitations in performance. (In this connection, the attached material was provided to Dr. Hornig before his recent visit to the Soviet Union.)

Dr. Dryden is now awaiting responses from Academician Blag-onravov to his letters on the space biology and deep space station projects. We are in continuing contact on these matters with your staff, the Department of State, and other agencies, and I shall continue to keep you directly informed.

Respectfully yours,

James E. Webb  
Administrator

Enclosure

cc:  
The Secretary of State

## STATUS OF NASA/SOVIET ACADEMY

### COOPERATION IN SPACE

#### 1. Communications project

##### Positive:

An experiment based on one-way transmission from Jodrell Bank to USSR at low frequencies was conducted and respectable data provided by USSR to NASA. Optical data of relatively little value was also provided on the inflation phase.

##### Negative:

The Soviet side without notice conducted the tests without transmissions, although a clear "exchange" was provided for; more desirable test content which the Soviet side had agreed to consider, namely, radar cross-sections and higher frequency tests, was not provided; and, despite an agreement to deal between NASA and the Academy, the Soviet side unilaterally set the schedule and procedure of the tests and sought to implement them directly with Lovell, ignoring Dryden's communications until Lovell refused to transmit, at which point direct communication was resumed by the USSR with NASA.

#### 2. Meteorological project

##### Positive:

A schedule and procedure for the exchange of conventional data has been successfully agreed and the meteorological link installed and tested, although reliability needs to be improved.

##### Negative:

Repeated efforts were made by the Soviet side to initiate the flow of data over the link prior to resolving the governing Second Memorandum of Understanding, despite clear insistence to the contrary

from NASA and USWB. Strenuous efforts were made by the Soviet side to reopen a closed agreement on the equal-sharing of cost of the link.

3. Magnetic field project

Positive:

A final agreement has been reached and the exchange of ground-based data has been greatly improved and expedited.

Negative:

The fundamental objective of joint mapping of the geomagnetic field has been vitiated in considerable degree by the early retreat of the Soviet side from an agreed data standard which would have provided the necessary information of position in space.

4. Venus/Mars exchange

Positive:

A discussion was held in Warsaw in June 1963 on the scientific results of the Soviet Mars flight and the US Venus flight.

Negative:

The discussion was close to useless because the Soviet side would not or could not provide any information to make its "data" comprehensible, e.g., although micrometeoroid hits were reported, the Soviet side would not give the threshold of the instrumentation, its orientation with respect to the flight path, nor whether it was sampling or counting total impacts, nor whether it was "on" at all times or turned on in anticipation of traversing given areas of space.

## 5. Space biology/medicine

### Positive:

Soviet initiative produced this proposal for a joint review and agreement was reached in June on the basis of US counterproposal.

### Negative:

Soviets exercised right to withdraw from agreement but then asked agreement on original proposal, offering no compromise. US proposed compromise based on single authorship, either US or Soviet, for each agreed chapter but only after necessary data provided by both sides and pronounced adequate for proceeding with selection of author in each case. US side frank to state domestic acceptance of agreement involving access to Soviet data requires clear commitments by Soviet side and suitable built-in safeguards (see micrometeoroid example above for normal expectation in data exchange with Soviets). Soviet side cited only lost time as argument against US proposal. However, failure to accept it clearly involves far more lost time.

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This document consists of 1 pages.

Number 1 of 9 copies of this document. *A* ✓

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY  
WASHINGTON

19

December 21, 1964

OFFICE OF  
THE DIRECTOR

Memorandum for McGeorge Bundy

DECLASSIFIED  
Authority NY 015-003-6-3  
By SP, NARA, Date 6/10/02

Subject: Ambassador Thompson's Memorandum  
to you of December 10, 1964  
concerning NSAM 294

Time did not permit me to raise this with you at this morning's meeting. We have talked in the past about ACDA's participation in current problems dealing with the control of military exports. This is to raise with you a particular case in point.

While we do not have operating responsibility for day-to-day decisions with respect to military exports, we do have responsibility for the long range planning which we hope will produce further international agreement limiting the spread of nuclear and other weapons. Day-to-day decisions on military exports often have major impact on that planning. It is, therefore, essential for ACDA to participate, at least as observers, in such planning.

For the first time last week, an ACDA observer was invited to attend a meeting of the State-Defense Coordinating Committee on Military Sales. We have not, however, participated in the NSAM 294 Working Group. Nor does Ambassador Thompson's memorandum to you of December 10, 1964 (p.5; p.7 of Tab B) contemplate our participation in the meetings on this subject to be called by you.

May I ask that you consider whether our participation in these meetings would not contribute to long-range planning toward the prevention of nuclear spread?

*William C. Foster*

William C. Foster

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Let's at em  
MFB*

*sk invited  
them to mtg  
12/30/64  
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INTERNATIONAL SECURITY AFFAIRS

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NSA 294

6261

ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D.C. 20301

18 DEC 1964

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In reply refer to:  
1030208/64

✓  
*Klein*  
*cy: Johnson*  
*Kearney*

Honorable McGeorge Bundy  
Special Assistant to the President  
for National Security Affairs  
The White House

Dear Mr. Bundy:

Ambassador Thompson sent you a memorandum on December 11, 1964, on Export Control Procedures under the Test Ban Treaty. As noted in that memorandum, DOD agreed with the proposed issuance of a regulation specifying the export controls to be applied, but recommended that the regulation should also cover strategic nuclear delivery systems, in order to meet the requirements of NSAM 294.

In our judgment, it appears unrealistic and short-sighted to apply widely differing standards of prohibition under the Test Ban Treaty and under NSAM 294. A non-signer nation's willingness or refusal to abide by the Treaty may well be affected by how easily it believes it can develop a delivery system for the weapons it is seeking to develop by tests that violate the Treaty.

Attached is a proposed revision of the proposed regulation which we feel will accomplish the desired purpose.

Sincerely,

SIGNED

Alvin Friedman  
Deputy Assistant Secretary

Enclosure - 1  
Proposed Revision

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EXCLUDED FROM AUTOMATIC  
DECLASSIFICATION ONR DIR 5200.10  
DOCS NOT APPLY

Authority: DOD Directive 5200.30

By ly, No. 12-1499

21

CORCORAN, FOLEY, YOUNGMAN & ROWE  
1511 K STREET, N. W.  
WASHINGTON, D. C. 20005

TELEPHONES  
REPUBLIC 7-0300  
REPUBLIC 7-3525

December 17, 1964

~~TELETYPE~~ CABLES  
FOLYN  
CORCORAN  
YOUNGMAN

DR: McGeorge Bundy  
Special Assistant to the President

Dear Mac,

Control Data Export License - French AEC

With further reference to our conversation, I enclose a copy of a letter to George Ball from E. E. Strickland, Vice President of Control Data, which sets forth the factual reasons for granting this export license.

Agreed, it is not enough to argue that the French AEC can probably get another computer somewhere. This is almost always true in problems of munitions control. The real problem for the Government, I would think, is how tough you can make it for the other country to achieve the same result. As a secondary consideration I would suggest the injury you do your own Nationals should not be completely ignored.

I submit that in the instant case you would not even be making it inconvenient for the French AEC by denying Control Data this license.

As Mr. Strickland points out, (Point 4, page 2) the French AEC is already using the Control Data computer leased by Control Data France to a French organization which sells time on computers.

*right*  
Our American competitor, IBM, manufactures computers at a town called Corberl. It manufactures four different computers: 70/70, 70/74, 70/40 and 70/44. IBM is setting up a new manufacturing center at Rellier for part of its new series of 360 equipment. IBM has a research center for about 1,000 people at a town called Layaude.

*wrong*  
Export licenses won't reach IBM!

The French Government has deliberately given orders in the past few weeks to IBM, Control Data and GE/French BULL.

*yes*  
On the other hand, we feel Control Data will be hurt badly by the denial of this export license in its international competition with IBM, GE/BULL and the English, who also manufacture abroad.

XEROX FROM QUICK COPY

You asked the cost of one of these computers. It is \$3 million. But, as Mr. Strickland points out, if the export license for this computer is refused it will be difficult for Control Data to continue operating - against competition in France. The Bank of France approves all ~~contracts~~ contracts since Control Data France requests approval to pay for purchases of computers from Control Data U.S. in dollars. Also, as he indicates most customers and prospective customers are owned or partly owned by the French Government.

You mentioned there are knowledgeable people in the Government on this problem. Perhaps. I think Control Data people are also knowledgeable. You are getting an ex parte presentation from the Government. If you feel the approval or denial of this export license is a close matter, we ask for an opportunity to talk with you.

After all, you yourself said it is a test case!



James Rowe

IONS

December 11, 1964

Mr. George Ball  
Under Secretary of State  
Department of State  
Washington 25, D.C.

Subject: Control Data Corporation request  
for Export License for its 3600  
computer system to the French AEC

Dear Mr. Ball:

We appreciated very much the opportunity to discuss with you the Government's position relative to computers and their consequential use as regarded under the MLF concept. We appreciate deeply the efforts you and others are hoping to accomplish in bringing nuclear weapons of the world under some concept of control. We understand that to give to other countries of the world the scientific tools with which they can singularly develop nuclear weapons is somewhat in conflict with these efforts to bring control to the nuclear weapon force of the world.

However, when one tries to apply this concept to the field of computers, the theoretical concept becomes a very difficult practical problem. In considering a request for an Export License to France, we find many practical problems. When we analyze these problems as they affect computers, we see no practical way to implement the theoretical concept of this part of the MLF program, for the following reasons:

1. The general purpose computers which Control Data Corporation and others manufacture not only in this country, but abroad, can be used for many different applications, while the basic hardware which the manufacturer sells is identical. The computers currently installed in France by us, as well as one of our U.S. competitors, can be used for a multitude of different applications. We have the identical computers in data centers where time is sold on an hourly-rate basis to any type of user. We have these computers at universities both here and abroad, where they do research as well as teach computer concepts and uses to students. We have computers installed in computational centers of large industrial companies, both here and abroad. In these computational centers, the companies do their own administrative work as well as company-sponsored research and development. As you know, they are also used in many government applications in this country. Thus, to restrict any country from the use of a computer would mean a total embargo of all computers to that country; even deny them the tools for research in any scientific field.

yes  
not if they  
are in a  
Weapon's lab

confuses dif  
ferent classes  
of computers

IONS

True but  
not too  
pertinent

2. In recent months, much publicity has been given to the advent of communications between computers. These communications systems are in various forms, micro-wave; voice-grade communications lines, such as telephone and telegraph; and the less-sophisticated methods, such as the actual transportation of magnetic tapes from one location to the other to solve a problem. These methods have all been developed to such a point that to effectively isolate any foreign country from the use of a computer would entail a complete embargo on all computers from the United States.

yes  
yes  
to care jobs  
and training

3. As to the case in point with the French AEC, this denial to France on the subject computer is ineffectual. In France today there are in operation two (2) CONTROL DATA 3600 Computers, five (5) IBM 7070/7094 Computers, of which I am aware, plus one (1) additional IBM computer named STRETCH. All these different computers are capable of doing basically the same job, and generally speaking, only their speeds are different. ~~Their effective cost per computation is not significantly different to create an economic hardship to France.~~ Thus, France already has a large reservoir of computers at her disposal and has had for a number of years.

yes

In Europe, ICT in London also builds a computer in this general class. As you know, IBM has significant manufacturing capabilities in France, which could augment any wishes of the French Government. Likewise, the GE/French BULL agreements could give France additional computer ability. As far as I can analyze, if Control Data is refused an Export License for the 3600 computer, we will have a very difficult time continuing operations in France, because for one thing, the Bank of France approves all of our contracts since CONTROL DATA FRANCE requests approval to pay for purchases of computers from CONTROL DATA U.S. in dollars. Coupled with that, the French Government is deeply interwoven with many of the French businesses, and most of our customers and future prospective customers are generally either owned or partly-owned by the French Government.

Control Data's forecast is to receive orders in the next three (3) fiscal years of approximately \$62 million in France, and \$190 million in the total international field. I believe a negative reaction of the State Department to our French AEC order would severely jeopardize the volume of business that we anticipate in the international markets. CONTROL DATA FRANCE has approximately sixty-eight (68) French employees depending on this business, and the company has made significant investment in the French computer market.

yes

4. The French currently have a 3600 computer that we have installed in Paris. The French AEC is using the computer up to three (3) hours per day to run production problems. This computer has been leased by CONTROL DATA FRANCE to a French organization which operates computers and sells time on the computers to customer users.

Mr. George Ball

-3-

December 11, 1964

~~CONFIDENTIAL~~ ?

*not true* In summary, I believe that if one complies with the spirit of the MLF, then one must stop all export of computers from the United States, because while denying just one customer in a specified country in the Western world a computer might be complying with the letter of the law, it is not possible to comply with the spirit.

If Control Data Corporation does not receive approval on our Export License our entire investment and efforts in the international markets are in jeopardy. For all of the aforementioned reasons we earnestly and respectfully solicit your approval of our Export License to France.

Very truly yours,



E. E. Strickland  
Vice President

jcm

		<u>Date 1st Delivery</u>	<u>Memory Cycle</u>	<u>Add Time (using overlap)</u>	<u>Memory Size</u>	<u>Word Length</u>	<u>Inst/Word</u>	<u>Address per inst.</u>	<u>Index Reg.</u>
	CDC 3600	6/63	1.5	2	32-262K words	48	2	1	6
French	Bull Gamma 60	'60	10	200	8-32K words	24		1-3	
"	Bull Gamma 30S	7/63	7	98	20-40K characters	1 character		1-3	3
British	ICT Atlas I	12/62	2	1.6*	16-262K words	48	1	1	128
"	ICT Atlas II	1/64	2.5	2.5	32-262K words	48	1	1	128
IBM	360/92	3/66	0.5/16	.075	1M-6M	64	0,1,2	1	16

\* This utilizes a small rod memory of 300 n.s. cycle time.

The Atlas computers are designed for double indexing. A few instructions of the 3600 are capable of this.

The 3600 has the capability of memory lock-out under programmer control. This makes it especially useful for real time work.

Two 3600's have just been installed at the real time facility at Cape Kennedy. They replace the IBM 7094's which will be turned back to the company in January. The 3600's are much better for real time multiple input and output.

The Gamma 60 is used mostly for business type operations with large capacity bulk storage and input-output.

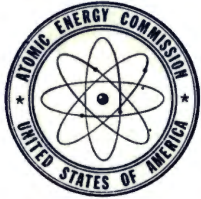
The IBM 360-92 is far beyond the CDC 3600. (For example, the 3600 will perform about .5M additions per second while the 92 will perform about 10M to 12M additions)

It will operate at 12 to 15 times as fast as the 360-70 (about equivalent to the STRETCH) which is about double the 3600.

It has 16 memories that are interleaved and operate at  $\frac{1}{2}$  us cycle time.

The operations are very highly overlapped with separate fixed and floating arithmetic units. The circuits will average 1.7 n.m. per stage with 9 n.s. per major cycle. Add time will be about 75 n.s.

The circuitry is different from that of the rest of the 360 series.



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UNITED STATES  
ATOMIC ENERGY COMMISSION  
WASHINGTON 25, D. C.

C. Johnson

6201

23

DEC 16 1964

Dear Mac:

We believe, as a result of the discussions and correspondence of recent weeks between our offices, that we have provided all the documentation and information you or your staff have requested in connection with the proposed contract for the sale of plutonium to Euratom for its fast reactor program.

Additionally, Euratom and its Associates are extremely anxious to conclude the contract in order to avoid further delays. (The first shipment which was to take place this month cannot possibly be made.) Therefore, we would appreciate being advised on a high priority basis as to whether we may now continue negotiations on the contract as presently drafted in anticipation of its early execution.

Sincerely,

A handwritten signature in cursive script, appearing to read "Glenn", is written over a faint, larger outline of the same signature.

Glenn T. Seaborg

Honorable McGeorge Bundy  
Special Assistant to the President  
for National Security Affairs  
The White House

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✓  
Thompson  
12  
25  
3

December 12, 1964

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McGB-

SUBJECT: Computers for France and NSAM 294

I am resubmitting the memorandum (Tab 1) on the computer problem in the context of NSAM 294. The problem is becoming more urgent. And we now have the views of the Secretaries of State and Defense and a Thompson piece on a separate but relevant problem.

AEC remains strongly in favor of making the IBM computers available to the French. AEC downgrades the importance of the computers and is concerned that denial of shipment will result in a further deterioration of our relations with France (Tab 1 A.).

The Secretary of State approaches the problem somewhat differently (Tab 2). He is concerned that the computer sales will identify the U.S. as a major supplier or collaborator in the French weapons program, and thereby run smack into the Test Ban Treaty prohibitions. He also adds that he wants to withhold judgment before making a specific recommendation because of the complexity of the problem.

The Secretary of Defense opposes the computer sales (Tab 3) because of the substantial assist they would give the French nuclear weapons program -- a move he characterizes as being inconsistent with this government's over-all anti-proliferation objective. His remarks are not unlike those sent in earlier by ISA (Tab 1 B.) The Secretary of Defense, however, just as the Secretary of State, did not look at the problem in terms of Franco-U.S. relations.

At Tab 4, I have attached a separate piece by Tommy Thompson dealing with the regulations and procedures for handling certain equipment apparently prohibited by the Test Ban Treaty provisions. Although this problem is directly tied to the Treaty prohibition rather than NSAM 294, it is not unrelated to the 294 issue.

The computer problem really gets to the guts of the adequacy, practicability and desirability of NSAM 294. It raises sharp domestic problems as well as the basic rationale of the NSAM (I am not now

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NLJ 05-109  
By ml, NARA, Date 10-29-07

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thinking of some of the idiot suggestions we have had) and our relations with France, both in terms of substance and timing.

My view is that NSAM 294, implemented sensibly, would not really interfere with or upset our dialogue (or more accurately non-dialogue with the French) so long as the issue is handled with some finesse. Indeed, a sensibly implemented 294 might give this government some interesting leverage in the conduct of those relations.

(This exchange of papers also raises the issue of U-235 for France. Departments break down in a somewhat different order on this question, with State and AEC joining forces against the Pentagon.)

However, these are such fundamental and critical issues, I don't think they can be handled at the second and third levels of government. They need an airing at the highest levels -- perhaps in a Tuesday-like forum. The President's sense of the problem and how to move ahead are critical.

There are rumors that Mr. Hodges is writing or has already written a memorandum on these points and reportedly he is all for engaging in business. But we really will not know what he wants until we see what he has written.

  
David Klein

Attachments

As stated

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A

## ARCHIVES PROCESSING NOTE

Document #27d was originally mis-numbered as Document #24d. The error was found and corrected on this date.

Alexis Castro  
December 1, 2011

27d

Appendix A

27f

Appendix B

27h

B

NSAM 294: CONTROL AND ENFORCEMENT OF POLICY

I. INTRODUCTION

Three complementary regulatory systems are involved in the implementation of the policy enunciated by NSAM 294, and these systems are derived from statutory authorities adequate to meet the requirements of NSAM 294. They are the system administered by the Department of Commerce to enforce the Export Control Act of 1949, as amended; the regulatory structure administered by the Department of State to control International Traffic in Arms, derived from Section 414 of the Mutual Security Act of 1954, as amended; and the regulatory activities prescribed under the Atomic Energy Act. There is, in addition to these systems of control, the United States Military Information Control Committee (US-MICC). This committee is the interdepartmental mechanism for coordinating the release to other governments of classified military information\* and material. As such, US-MICC formulates and administers the National Disclosure Policy.

Attached are statements of the applicable control provisions and regulatory systems.\*\*

In summary, these control systems comprehend the following objectives.

A. The Export Control Act of 1949, as amended, sets forth as policy that the U.S. will use export controls to the extent necessary:

- - - - -

\* Foreign dissemination of Restricted Data under Agreements for cooperation is administered by AEC and DOD pursuant to the Atomic Energy Act.

- \*\* Annex 1. U.S. Department of Commerce Advisory Committee on Export Policy and Structure.
- Annex 2. Legislative and Regulatory Structure for Control of International Traffic in Arms by the Office of Munitions Control.
- Annex 3. Statement on Scope of Regulatory Activity provided for under the Atomic Energy Act.
- Annex 4. Organization and Function of US-MICC.

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 By isl, NARA, Date 4-4-06

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1. To protect the domestic economy from the excessive drain of scarce materials and to reduce the inflationary impact of abnormal foreign demand;
2. To further the foreign policy of the U.S. and to aid in fulfilling its international responsibilities;
3. To exercise necessary vigilance over exports, from the standpoint of their significance to the national security of the U.S.;
4. To formulate and apply such controls to the maximum extent possible in cooperation with allies with which the U.S. has defense treaty commitments;
5. To formulate a unified commercial and trading policy to be observed between non-communist and communist dominated nations;
6. To use U.S. economic resources in trade with Communist dominated nations to further U.S. national security and foreign policy objectives.

To carry out these objectives, the Department of Commerce has established an Export Control Review Board, an Advisory Committee on Export Policy; and an Operating Committee, in descending order of hierarchical importance. This committee structure enables all possibly concerned agencies of the Government, ranging from Commerce to the Office of Emergency Planning, to express their views and, in case of major policy disagreement, have resolution made by the Secretaries of Commerce, State and Defense.

B. The International Traffic in Arms Regulations derive from Section 414 of the Mutual Security Act of 1954, as amended. This Act confers upon the President authority to control, in the furtherance of world peace and the security and foreign policy of the U.S., the export and import of arms, ammunition and implements of war, including technical data relating thereto. The President, by Executive Order, conferred these functions upon the Secretary of State, in consultation with appropriate agencies. In turn, the Secretary of State delegated authority to the Deputy Assistant Secretary for Politico-Military Affairs, who assigned functional responsibility to the Director, Office of Munitions Control.

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- 3 -

C. The Atomic Energy Act prescribes control over atomic weapons or parts thereof; any parts of atomic weapons systems or any other items or information revealing Restricted Data; and activity, classified or unclassified, which would constitute directly or indirectly engaging in the production of special nuclear material outside the United States; source by-product and special nuclear materials; utilization and production facilities; and any other item or technical data to be exported subject to the terms of an atomic energy Agreement for Cooperation with another nation. The statutory definitions of certain terms are important to the basic regulatory structure, and are described in Annex 3.

The Atomic Energy Commission may distribute special nuclear material abroad, may license the export of production and utilization of facilities, and may permit the communication of Restricted Data abroad only pursuant to an Agreement for Cooperation. However, source and by-product material may be distributed abroad either pursuant to such an Agreement or by licensing a private party provided the Commission determines such exports will not be inimical to the United States.

D. The U. S. Military Information Control Committee (US-MICC) derives authority from Presidential delegation to the Secretaries of State and Defense. US-MICC is responsible for policy and procedures designed to enable disclosures of classified military information to foreign governments and international organizations, with a proper balance between U.S. foreign policy-military objectives and the preservation of the security of U.S. military secrets. In so doing, US-MICC, among other activities, reviews its existing policies and procedures to keep them up to date, assures that the releasing agencies act consistently in applying these policies and procedures, and evaluates foreign government security systems to determine their ability to protect U.S. classified information. The Committee consists of representatives of the Secretaries of State, Defense, Army, Navy, Air Force, the AEC and Director of CIA. The Department of State provides the Chairman and Deputy Chairman. JCS are entitled to have an observer, as is NASA. Other departments and agencies may participate as US-MICC deems appropriate.

II. The

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## II. THE PROBLEM OF COORDINATING AGENCY RESPONSIBILITIES FOR IMPLEMENTING NSAM 294.

A. The Statutory authorities and regulatory systems described in Section I indicate that the major departments or agencies concerned with the implementation of NSAM 294 (State, Defense, Commerce, AEC and NASA) either have primary responsibility for administering or participate in activities and systems which will require coordination as NSAM 294 is further implemented, to assure consistency and uniformity in applying this policy. The current export control mechanisms are basically directed at: (1) controlling the export to Communist countries of all commodities as well as advanced industrial and scientific technology; (2) controlling relatively easily recognizable military systems and components, as shown on the Munitions List; (3) controlling Atomic weapons, military reactors, restricted data and formerly restricted data, and materials, production equipment and technology; (4) control of security-classified information to foreign countries. The existing control mechanisms have been capable of achieving the objectives for which they were designed.

The problems raised by NSAM 294 derive from the fact that this directive appears to widen the ambit of control with respect to the export of technology and equipment to friendly countries; that we can expect, therefore, a considerable increase in the number of license applications and in the complexity of the issues posed; and that there will be a need to exert greater effort to assure reasonable consistency in the decisions which must be made in implementing the NSAM. These problems are further complicated by the probability that release criteria may vary from country to country, with ability to license export of equipment or technology depending upon the existing or potential capabilities and intentions of the recipient with respect to nuclear weapons and strategic delivery programs. An additional element is that there is presently no international mechanism, such as COCOM, to assure parallel controls by other friendly nations.

B. The technical annexes to NSAM 294 indicate the complexity of the considerations which may arise in approving or denying a specific release. They require the implementing agencies to take into account such items as, for example:

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1. Technical state-of-the-art and industrial know-how available to France (other countries) internally or from other countries;
2. Competitive hardware available to France;
3. U. S. hardware and data currently in French hands (received via formal channels or obtained by other means);
4. Ongoing data exchange and hardware agreements;
5. Foreign subsidiaries and licensees of U.S. companies;
6. Hardware and data previously released by the U.S. to France and countries other than France;
7. Evaluation where appropriate with respect to the current U.S. policy on expansion of exports, and effect on the U.S. economy (positive or negative) of the specific release and potential related releases:
  - (a) U.S. competitive position, employment, and profit dollars;
  - (b) Balance of payments.
8. In certain instances, receipt by the U.S. of significant technology, or other items of military value.

Further, in terms of the number of applications which will have to be processed, it is clear that items or areas not now on the Munitions List, Commerce's Positive List, or within the Atomic Energy Commission's area of control will have to be added (e.g., certain types of high-performance X-Ray machines, and electronic equipment of an "off-the-shelf" nature.)

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### III. AREAS OF CONTROL SYSTEM WHICH REQUIRE FURTHER EXAMINATION

The immediately preceding section has postulated that widening the ambit of controls relating to friendly countries, including major U.S. allies, introduces a variety of factors of imprecise weight into the consideration of an application for license to export a finished product, transmit technical data, or even have an industry-to-industry meeting. Existing criteria under the present regulatory systems are, thus, likely to require material modification. Further, there should be a considerable increase in the number of applications, as American industry is made aware of the range encompassed within the penumbra of NSAM 294.

In the absence of a clear and coordinated presentation to the public by the agencies concerned of the nature, extent and mechanisms of control the government intends to exercise, industry may well be confused or opportunities may develop to evade the intent of the program, while the conscientious firm can be unduly penalized. Thus, in implementing the NSAM, it will be necessary to assure adequate exchange of information and that the procedures and the decision making processes are consistent among the implementing agencies. Moreover, if the requirement of the present Draft Implementation of the NSAM is maintained that "all contacts, meetings, visits, agreements contemplating cooperation of any kind with France or any other nation concerning the subjects (in categories A and B) shall be reported in exact detail as to the nature of the contact or agreement to the Office of Munitions Control in the State Department," then it will probably be necessary to increase substantially means available to the government to evaluate such reports on a centralized basis and to disseminate the results of this evaluation to the participating agencies.

While it does not seem necessary to change the existing regulatory authorities, it does appear necessary:

1. To assure the fullest exchange of pertinent information to and between the major concerned agencies; DOD, Commerce, State, AEC, NASA and CIA;

2. To

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2. To assure a reasonable degree of consistency in the decision-making process, through coordinating both the Technical Review of license applications and the Policy Review following the technical evaluation;
3. To disseminate pertinent decisions to U.S. industry, as well as in the Government, in the most feasible fashion.

#### IV. NEXT STEPS

The requirements for coordinated activity outlined immediately above raise, among others, the following questions. Can consistency in the Technical and Policy Reviews be more easily achieved through such devices as automated data processing (ADP)? Who should chair the coordinated Technical Review process, or is it necessary to modify the existing provisions for Technical Review under the different regulatory systems, other than to provide for an exchange of information? Where should primary responsibility rest for initiating action or making decisions in the Policy Review - or should this be a function merely of the office to which the license application was presented? Assuming the criteria of NSAM 294, at least in the technical annexes, should regularly be reviewed and if necessary be revised, how should this be done? How should industry be kept advised of pertinent developments or policy decisions?

It is believed that these, and other questions not here adverted to, could best be examined by a small Inter-agency Working Group to be composed of representatives of the major agencies concerned (DOD, State, AEC, Commerce, NASA) with CIA participating as its interests are affected. This working group has already been established and commenced work. It should report back its findings, at least on a preliminary basis, by January 15.

Concurrences: OSD/ODDRE - Mr. Murray  
MC - Mr. Sipes  
AEC - Mr. O'Donnell  
NASA - Mr. Gorman

G/PM:HMeyers:OSD/ODDRE:JAPerlman:ml 12/4/64

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Annex 1

U. S. DEPARTMENT OF COMMERCE  
BUREAU OF FOREIGN COMMERCE  
Washington 25, D. C.

7K

BRIEFING PAMPHLET

ON

UNITED STATES EXPORT CONTROL PROGRAM

ADMINISTERED BY THE BUREAU OF FOREIGN COMMERCE OF

THE UNITED STATES DEPARTMENT OF COMMERCE

Revised October 1, 1960

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I. INTRODUCTION

This pamphlet sets forth in summary form the character and scope of United States export controls administered by the Bureau of Foreign Commerce of the United States Department of Commerce.

The Bureau of Foreign Commerce is the principal export control agency of the United States Government. This Bureau exercises control over all exportations except the following:

<u>Description</u>	<u>Controlling Agency</u>
Atomic energy equipment and materials	Atomic Energy Commission
Arms, ammunition, and implements of war and helium	Department of State
Gold and narcotics	Treasury Department
Vessels (other than vessels of war)	United States Maritime Administration
Natural gas	Federal Power Commission
Tobacco seed and plants	Department of Agriculture

The term "export controls," as used in this pamphlet, refers exclusively to export controls administered by the Bureau of Foreign Commerce.

II. LAWS RELATING TO UNITED STATES EXPORT CONTROLS

The basic law relating to export controls is the Export Control Act of 1949 (as amended).

In administering the Export Control Act there are, of course, other laws which must be taken into account. Two laws of special interest are the Administrative Procedures Act and the Federal Reports Act. The Administrative Procedures Act requires that regulations issued under the Export Control Act (as well as under other regulatory laws) must be formally announced to the public and may not be changed except through official public notices. The Federal Reports Act provides that all regulations requiring information or reports from ten or more private persons for governmental use, including those required from exporters in connection with export licenses, must be reviewed and approved by the Bureau of the Budget. The Bureau of the Budget, which is in the Executive Office of the President, is responsible for assuring that all requests for information from business are reasonable

and that there is no duplication of information which business is required to furnish to various departments of the Federal government.

### III. BASIC PROGRAMS IN UNITED STATES EXPORT CONTROLS

The basic programs administered in connection with the United States export controls stem from the following statement of policy in the Export Control Act of 1949 (as amended):

"The Congress hereby declares that it is the policy of the United States to use export controls to the extent necessary (a) to protect the domestic economy from the excessive drain of scarce materials and to reduce the inflationary impact of abnormal foreign demand; (b) to further the foreign policy of the United States and to aid in fulfilling its international responsibilities; and (c) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security."

From this statement of policy, the following major objectives have evolved:

1. To conserve the supply of commodities which are scarce in the United States ("Short-Supply Controls").
2. To restrict the exportation of strategic materials and technical data from the United States to Soviet bloc nations, either directly or through a third country ("Security Controls").

The United States programs are linked with an international export control program which is discussed in Section IV. The United States programs are described below:

#### A. Short-Supply Controls

In controlling exports for short-supply reasons, the United States realizes that needs of friendly foreign countries represent an important claim on U. S. materials which are in short supply. Therefore, in determining short-supply export quotas, such factors as the importance of foreign requirements, traditional dependence upon the U. S. for supplies, and U. S. foreign policy considerations are weighed against the impact of exports upon the domestic economy.

The importance of fulfilling foreign requirements was shown during the Korean emergency. At that time, several hundred commodities, both finished products and raw materials, were extremely scarce. The U. S. had to institute a system of domestic distribution controls to enable U. S. producers of defense, defense-supporting, and

essential civilian end-use items to obtain adequate supplies of needed materials. At that time export quotas, reflecting the overall supply-demand situation, were established and certain quantities were reserved for export within the domestic allocation framework. Thus, friendly foreign countries were assured of obtaining predetermined quantities of essential commodities. Export orders were accorded priority ratings, within the quota reserved for export, on the same basis as domestic orders. Essential foreign requirements were thus given preference over less essential domestic uses.

When the Korean emergency ended, domestic distribution controls were discontinued as soon as circumstances permitted. A drastic reduction of short-supply export controls followed, for it is the general policy of the U. S. government to retain export controls for reasons of short supply only where they support domestic distribution controls or because of other special reasons. Thus, within a very short time after the end of domestic distribution controls, only a few commodities remained subject to short supply export controls. At the present time, no commodities are controlled for short supply reasons.

#### B. Security Controls

Security export controls are designed to assure that U. S. origin goods do not contribute to the war potential of the Sino-Soviet bloc. These controls include prohibition of shipments of strategic commodities to the U.S.S.R. and other bloc countries, and a total embargo on shipments to Communist China, North Korea, and the Communist-controlled area of Viet Nam. Trade with European countries in the bloc in non-strategic commodities is permitted, although much of this trade requires a transaction-by-transaction approval from the Bureau of Foreign Commerce before an exportation can be effected.

Brief reference has already been made to the international export control program, which is discussed more fully in Section IV. However, in order to complete the discussion of United States security controls, it is necessary to mention at this point that the nations cooperating in the international export control program jointly prohibit shipment of a list of strategic commodities (known as the "international list") to the Soviet bloc. It is the policy of the United States to exercise controls on certain commodities which are not on the international list. For the most part, these are commodities for which the United States is the primary source of supply or for which the United States has unique technological know-how.

United States security controls on exports to free world countries are designed primarily to prevent the unauthorized diversion of U. S. origin strategic goods to the Soviet bloc. They are also designed to prevent U.S. exports of strategic goods from contributing significantly to the ability of a friendly country (a) to replace, maintain, or increase that country's own shipments of strategic goods to the Soviet bloc; and (b) to produce strategic goods from U.S. capital equipment or production materials for shipment to the Soviet bloc. Pursuant to this policy, the United States, in appropriate cases, requests assurances from friendly countries that U.S. origin goods will not be exported by such countries to the Soviet bloc. In general, such requests for assurances are limited to items for which the United States constitutes a major source of supply of the item for the friendly country in question. Obtaining assurances that such items will not be reexported to the Soviet bloc is the only means by which the United States can satisfy itself that United States-origin goods of a strategic character are not making possible shipment of significant quantities of like items to the Soviet bloc by friendly countries.

Because of the close proximity of Hong Kong and Macao to Communist China, and because of the historical function of both areas as major funnels of trade to China, special controls over exports to these areas are maintained.

Special controls may also be exercised with respect to other nations from time to time. An example is when a nation (as appears to be true of Cuba at the present time) is subject to an unusual amount of Communist influence or infiltration.

#### IV. INTERNATIONAL EXPORT CONTROL PROGRAM

It was recognized that United States export controls would be largely ineffective unless similar controls were adopted by other important industrial nations of the free world. Therefore, early in 1948, the U. S. government established regular consultation with a number of friendly countries to obtain their cooperation in restricting exports which would contribute to the growth of the Soviet bloc war potential. This consultation has resulted in the establishment of a program designed to control exports from the free world to the Soviet bloc. The principal feature of the program is the above-mentioned "international list" of strategic commodities which all of the cooperating countries embargo to the bloc. The international list represents a minimum level of control, and the individual nations are left free to exercise a higher level of control where they deem it in their national security interests to do so. As previously stated, the United States exercises control on certain commodities not on the international list.

The current legislative framework for the efforts of the United States to enlist the cooperation of other nations in export controls is the Mutual Defense Assistance Act of 1951. The responsibility for coordinating the activities of the several interested U. S. government agencies in this field rests with the Under Secretary of State for Economic Affairs in his capacity as Administrator of the Mutual Defense Assistance Act. Because of the similarity between the basic objectives of the Mutual Defense Assistance Act and the Export Control Act with respect to export controls to the Soviet bloc, the Department of Commerce operates in close coordination with the Administrator of the Mutual Defense Assistance Act.

V. ADMINISTRATIVE ORGANIZATION FOR EXPORT CONTROLS

A. Authority to Administer U. S. Export Controls

The Export Control Act of 1949 authorizes the President of the United States to control United States exports. By Executive Order, the President has delegated this authority to the Secretary of Commerce. In turn, the Secretary of Commerce has delegated to the Director of the Bureau of Foreign Commerce authority and responsibility for the administration of export controls.

B. The Advisory Committee on Export Policy

The Export Control Act of 1949 directs that the official responsible for administering export controls "... shall seek information and advice from the several executive departments and independent agencies concerned with aspects of our domestic and foreign policies and operations having an important bearing on exports." The Secretary of Commerce has established an "Advisory Committee on Export Policy" in order to obtain the "information and advice" which by law he is obligated to seek.

The Advisory Committee on Export Policy is the central body in the United States Government for developing and recommending to the Secretary of Commerce the policies which govern the administration of U. S. export controls. The results of committee considerations are embodied in "Program Determinations," issued on behalf of the Secretary of Commerce, which are binding as directives to the Bureau of Foreign Commerce. The Advisory Committee on Export Policy comprises representatives from all government departments with a continuing interest in the international trade and foreign policy of the United States. The following agencies are regularly

represented on this committee:

Atomic Energy Commission  
Central Intelligence Agency  
Department of Agriculture  
Department of Commerce  
    Bureau of Foreign Commerce  
    Business and Defense Services Administration  
Department of Defense  
Department of Interior  
Department of State  
International Cooperation Administration  
Mutual Defense Assistance Control Administration  
    (Battle Act Administrator)  
Office of Civilian and Defense Mobilization  
Treasury Department

In addition, any other Government department may participate in the deliberations on any subject in which such department may have an interest, either by invitation or on the department's own initiative.

The Advisory Committee on Export Policy is comprised of department representatives at the Assistant Secretary level. This committee normally meets only to consider basic policy problems. The day-by-day work of the Advisory Committee is carried forward by its Operating Committee, which has the same agency representation as the Advisory Committee. However, membership of the Operating Committee consists of administrative officials.

The Business and Defense Services Administration is responsible for recommending to the Operating Committee such short-supply controls as may appear necessary. The Secretary of Commerce exercises ultimate responsibility for short supply determinations under the Export Control Act.

The review and establishment of policies relating to security controls are the interrelated responsibility of both the Secretary of Commerce, due to his export control responsibilities pursuant to the Export Control Act, and the Administrator of the Mutual Defense Assistance Act pursuant to his responsibilities under that statute.

The review of the United States strategic commodity lists and consideration of other security problems are carried out through two separate forums: the Operating Committee, which makes recommendations to the Secretary of Commerce with respect to United States controls, and a Working Group No. 1 of the Economic Defense Advisory Committee of the Office of the Administrator of

the Mutual Defense Assistance Act. This committee makes recommendations to the Administrator with respect to controls to be advocated by the United States in international discussions.

C. Bureau of Foreign Commerce

As stated above, the Bureau of Foreign Commerce is responsible for administrative matters connected with export controls, such as publication of regulations, consideration of license applications, issuance of validated licenses, and detection and investigation of violations of export control regulations. It is also responsible for technical direction of export control functions of the Customs Service of the Treasury Department.

Four branches of the Bureau of Foreign Commerce are concerned with export controls: (a) Office of Export Supply; (b) Office of Economic Affairs; (c) Office of Trade Promotion; and (d) Export Control Investigation Staff.

The primary responsibility for export control is centered in the Office of Export Supply. This office consists of (a) two divisions concerned with licensing of commodities and technical data for export; (b) a Strategic Controls Division concerned with problems of security controls and efforts to secure parallel action on the part of foreign governments; and (c) an Operations Division performing a number of functions, including the development of regulations and internal operating instructions, information and service to exporters, a program of review of action on license applications, liaison with the Customs Service on export control matters, and clerical work incident to handling license applications.

The Commercial Intelligence Division in the Office of Trade Promotion and the various geographic divisions of the Office of Economic Affairs also play significant roles in the export control program. The Commercial Intelligence Division provides licensing officers with information regarding the reliability of domestic and foreign firms named on export license applications. Such information is an important factor in determining whether a given application should be licensed. The geographic divisions supply information (concerning the areas over which they have jurisdiction) which is important in formulating export control policies for such areas.

The Investigation Staff of the Bureau of Foreign Commerce performs various functions which are described in Section VIII, "Prevention, Investigation, and Punishment of Violations."

D. Office of the General Counsel, Department of Commerce

This office, acting through staff members especially assigned to export control, assures the legal sufficiency of export control regulations and furnishes legal advice on export control matters in general. The General Counsel's Office also performs certain functions in connection with the investigation and punishment of violators. These are described in Section VIII.

E. United States Customs Service, Treasury Department

The United States Customs Service is responsible for enforcing export control regulations for the Bureau of Foreign Commerce at the point of exportation.

Personnel in the Customs Service must see that each exportation complies with all pertinent provisions of export control regulations. The Customs Service is responsible for examination and inspection of cargo as well as for review of documents relating to each exportation.

VI. BASIC PROVISIONS OF UNITED STATES EXPORT CONTROL REGULATIONS

A. Published Regulations

United States export control regulations are published by the Bureau of Foreign Commerce in the "Comprehensive Export Schedule," which is a loose leaf volume of current regulations issued under the authority of the Export Control Act. The regulations are also published in the Federal Register. <sup>1/</sup> Whenever the regulations are amended, a "Current Export Bulletin" is issued containing pages for insertion into the Comprehensive Export Schedule after the superseded pages have been removed. Thus, the publication is kept current at all times.

B. General Prohibition Against Exportations

The United States export control regulations provide that exportation "from the United States of all commodities and technical data ..." is prohibited unless the Bureau of Foreign Commerce has authorized the exportation either by issuing a "validated license" or establishing a "general license" permitting such exportations.

A validated license is a formal license document issued to the exporter by the Bureau of Foreign Commerce based on approval of an application which he submits. A "general license" is an authority

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<sup>1/</sup> The Federal Register is an official publication of the United States Government which publishes all official notices, rules, regulations, or other documents required by law to be published.

granted by the Bureau of Foreign Commerce which permits exportation of certain commodities under specified conditions without a validated license. No license document is issued for a shipment being made under a general license. The Comprehensive Export Schedule lists the various general licenses which are available and the conditions under which each may be used.

Before discussing validated licenses and general licenses, it is necessary to explain the terms "country groups" and "Positive List of Commodities" as they are used in the United States export control regulations.

C. Country Groups

There are two main groups of countries defined in United States export control regulations. These are identified as Group "R" and Group "O." (Within Group "R" there is a group of countries identified as Subgroup "A.") The letter symbols themselves have no significance and are simply used as brief codes to identify the group of countries in each category. The country groups can be described as follows:

Group "O"	All countries in the Western Hemisphere (except the United States and Canada).
Group "R"	All countries in Europe, Asia, Australia, and Africa, and islands in the Eastern Hemisphere, including those listed under Subgroup "A."
Subgroup "A"	All countries in the Soviet bloc including Communist China, North Korea, and the Communist-controlled area of Viet Nam, but excluding Poland.

D. Positive List of Commodities

The Positive List of Commodities is a list published in the Comprehensive Export Schedule showing the commodities which require a validated export license from the Bureau of Foreign Commerce for shipment to Group "R" countries and, in some cases, to Group "O" countries.

The Positive List commodity descriptions correspond as closely as possible to commodity descriptions used in "Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States," which is the commodity classification system used in compiling export statistics. Exporters have used this classification system for many years and must be familiar with it regardless of export controls.

E. Controls over Commodities not on the Positive List

In most cases, commodities not on the Positive List may be shipped to free world countries under general license. All non-Positive List commodities, except for certain specified non-strategic commodities, require validated export licenses for shipment to countries in the Soviet bloc (not including Poland), and to Hong Kong and Macao. For purposes of export controls, Poland is treated more liberally than other countries in Eastern Europe. Most commodities may be shipped to Poland under general licenses. However, validated licenses are required for shipments of a limited number of non-Positive List commodities to Poland. As stated above, a complete embargo is exercised over all shipments to Communist China, North Korea, and the Communist-controlled area of Viet Nam.

F. General Licenses

There are a number of different kinds of "general licenses," some broad in scope and others limited in scope. The following paragraphs briefly summarize the most important ones.

1. General License GRO

This general license permits exportations to any country in the world, except Hong Kong, Macao, and destinations in Subgroup A, of any commodity which is not listed on the Positive List, except certain specified commodities destined to Poland, Cuba, and the Dominican Republic.

2. General License GO

This general license permits shipment to any Western Hemisphere country of any commodity shown on the Positive List where the "Validated License Required" column on the Positive List indicates that a validated license is required for "R" destinations only.

3. General License GLV

This general license permits shipment to any destination, except Hong Kong, Macao, Poland, or a Subgroup A country, of small value shipments of commodities on the Positive List. 1/ The

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1/ At the present time, this general license may not be used for shipment of certain specified commodities destined to Cuba and the Dominican Republic.

Positive List indicates the maximum value limit for each commodity. Some commodities have a "Zero" limit, which means that General License GLV cannot be used. Other GLV limits for Positive List commodities are set variably from \$5 to \$2,500, depending on the nature of the commodity. General License GLV also permits small value shipments of non-Positive List commodities to Hong Kong and Macao.

4. General License GHK

This general license authorizes exportation to Hong Kong and Macao of a special group of commodities. A validated export license is required for any shipment to these destinations not exportable under GHK.

5. General License GLSA

This general license authorizes exportation of a limited number of peaceful goods to certain Subgroup A countries. A validated export license is required for any shipment to these destinations not exportable under GLSA.

6. Other General Licenses

The general licenses summarized above are used widely for commercial exportations. In addition, there are a number of special purpose general licenses covering such exportations as personal baggage; publications; tools of trade; stores, supplies, equipment, and crews' effects for ships and planes; shipments to United States representatives abroad; commodities for exhibition at trade fairs; and technical data.

NOTE: Most of these special purpose licenses permit exportation of Positive List as well as non-Positive List commodities as long as exporters ship "usual and reasonable kinds and quantities" of materials. It is the responsibility of Collectors of Customs to determine whether the kinds and quantities of materials being exported are "usual and reasonable" in terms of the general license being used.

G. Validated Licenses

There are two major types of validated licenses issued by the Bureau of Foreign Commerce -- "individual" and "bulk" licenses.

1. Individual Licenses

The individual license is the principal type of license. This license authorizes the exportation of a specified quantity of a designated commodity or group of related commodities from a named exporter to a named importer for a specified end use.

The individual license affords the highest degree of control. Every phase of the transaction is subject to careful scrutiny and may be taken into consideration in the issuance of the license. On the application for an individual license, the commodity is described in considerable detail, frequently including specifications; the destination is given; price and other details are set forth; the supplier is identified; the foreign importer and all other parties to the transaction are named; and the end use of the commodity is stated. The exporter is required to have an order from his foreign customer before submitting an application for an individual license.

There are five steps through which all applications for individual licenses move. These steps are as follows:

a. Registration of Applications for Export License

The application for export license (FC-419) is examined to see that it has been properly filed in duplicate and is accompanied by an acknowledgment card (FC-116). It is further examined to determine whether any party named in the application has been suspended from participation in exports as a result of a violation of U. S. export control regulations, and to see whether the importer is subject to special scrutiny (detailed information is available from the Commercial Intelligence Division which maintains current information on both foreign and domestic firms). All papers related to each application are given a case number. One copy of the acknowledgment card is returned to the applicant advising him of the case number assigned to the application. The duplicate copy is filed in the Bureau of Foreign Commerce by name of exporter. The application is forwarded to the appropriate licensing division.

b. Licensing Action

Every licensing action taken by the Bureau of Foreign Commerce is authorized by a licensing officer in one of the licensing divisions of the Bureau of Foreign Commerce.

Each licensing division is organized to handle large commodity groups and each licensing officer is assigned specific commodities. For example, all applications for ball bearings are handled by a single licensing officer in the Industrial, Scientific, and Technical Division.

Most applications are either approved or rejected, but in some cases they are "returned without action" to the applicant for one of the following reasons: the commodity is not adequately described; the application is incorrectly prepared in other respects; the licensing officer needs additional information about the proposed transaction; an export license is not required for the proposed shipment. Except in cases where a license is not required, the applicant is requested to correct his application and return it for reconsideration.

In taking action on any application, the licensing officer is responsible for (1) all technical commodity considerations regarding the transaction covered by the application; (2) seeing that all applicable regulations are complied with; (3) obtaining information from the Commercial Intelligence Division regarding parties named in the application either in the United States or abroad; and (4) obtaining advice from other government departments, such as the Department of Defense, Department of State, etc., where required.

Actions taken by the licensing officer must conform with policies established by the Secretary of Commerce through his Advisory Committee on Export Policy, regulations set forth in the Comprehensive Export Schedule, and Administrative Instructions contained in the Office of Export Supply Manual. 2/

In licensing commodities controlled for security reasons, the licensing officer must take into consideration such factors as the following:

- (1) Does any information on the application -- e.g., a quantity which appears to be in excess of the ultimate consignee's requirements -- indicate the possibility of unauthorized transshipment?

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2/ The Office of Export Supply Manual is a set of instructions for licensing officers and other personnel of the Bureau of Foreign Commerce.

- (2) Does the country of ultimate destination cooperate in restricting shipments of the commodity to the Soviet bloc?
- (3) Does information received from the Commercial Intelligence Division show that one or more of the parties to the transaction has previously engaged in unauthorized transshipment or otherwise violated U.S. export control regulations?

As stated above, no commodities are presently controlled for short supply reasons. However, when it is necessary to control commodities for these reasons, the licensing officer considers such matters as:

- (1) What is the total quota for this commodity, i.e., what is the maximum amount which may be licensed for export in a specific period?
- (2) What are the requirements for the commodity in each foreign country to which exportation will be authorized?
- (3) What United States exporters have traditionally supplied this commodity to specific markets?
- (4) For what end uses may exportations be authorized?
- (5) If a license is granted, will the exporter be able to obtain the commodity in the United States market?

Many applications for export licenses must be accompanied by certain documents. Following are examples:

- (1) An import certificate supplied under the IC/DV system. (See Section H below.)
- (2) An ultimate consignee and purchaser statement, i.e., a statement signed by the consignee and purchaser abroad in which he (or they, if the ultimate consignee is not also the purchaser) makes representations to the United States exporter and Bureau of Foreign Commerce regarding the use and distribution of commodities proposed for exportation from the United States. (See Section I below.)

- (3) A Swiss Blue import certificate in the case of proposed exportations to Switzerland.

In reviewing an application, the licensing officer may find it necessary to request an "export transaction check" by the U. S. Embassy or a U. S. Consulate in the proposed country of ultimate destination. For example, such a check might be made when the quantity on an application is so large as to raise doubts in the licensing officer's mind that the merchandise will be used for the purpose stated.

From time to time, applications require consideration on a broader basis than by the licensing division alone. Such applications are referred, for study and recommendation, to the Strategic Controls Division, which in turn may refer the case to the "BFC Working Group." This group consists of representatives of various divisions within the Bureau of Foreign Commerce, including the Strategic Controls Division, the interested licensing division, the appropriate geographic division, the Commercial Intelligence Division, and the Investigation Staff. The BFC Working Group may in turn refer the case to the Operating Committee if it appears to warrant interdepartmental consideration.

c. Review of Licensing Actions

Before the licensing action is officially completed, the Review and Processing Section of the Operations Division reviews licensing actions to be sure that policies, regulations, and instructions are being correctly interpreted and uniformly applied by licensing officers. This review, however, is undertaken only on about one-third of the licensing actions.

d. Issuance

After applications have been acted upon by the licensing officer (and reviewed) they are cleared through a clerical unit and the licensing action is formally issued to the exporter. If the application has been

approved, an export license is typed on special type paper incorporating safeguards against alteration, forgery, and misuse in general. For example, typewriters used for this purpose are made up with specially designed type and the license document, when issued, bears an official stamp of the Department of Commerce. If the application is rejected, the applicant receives a special rejection notice.

e. Files

After official action has been taken, each application, together with related documents, is deposited in the files of the Bureau of Foreign Commerce and may be removed only by authorized employees. Whenever material is removed from the official files for reference, a facsimile of the material is made on microfilm equipment. Thus, if an application file is lost, destroyed, or tampered with, a duplicate copy can be produced from the microfilm. Records maintained in this section include files of:

- (1) License applications and related documents showing the official record of all actions taken by the Bureau of Foreign Commerce.
- (2) Acknowledgment cards, which provide (by name of exporter) a reference to all applications filed with the Bureau of Foreign Commerce.
- (3) Licenses, including both a carbon copy of the license when issued and the original license after it has been used.

2. "Bulk" Licenses

It is not necessary for every individual export shipment requiring a license to be covered by individual license. In many situations, the objectives of export control can be met by so-called "bulk" licenses. Under the bulk license technique, only one application need be filed to cover a number of transactions which would otherwise require the submission of separate applications.

a. Project Licenses

The most important type of bulk license is the "project license," which authorizes the exportation of all Positive List commodities necessary for the construction and/or maintenance of a special "project." Typical types of projects which might qualify for project licenses are:

- (1) Maintenance and operation of a copper mine.
- (2) Erection of a penicillin plant.
- (3) Modernization of railways.
- (4) Petroleum exploration and development operations.
- (5) Construction of a hydroelectric plant.
- (6) Construction of tin-producing facilities.

The Bureau of Foreign Commerce needs a great deal more information about a proposed project than is provided for on the standard application form for individual type validated licenses. Therefore, in addition to submitting the standard application form, the exporter must also submit a detailed statement of commodity requirements and a comprehensive narrative statement describing the project. This statement includes:

- (1) A detailed description of the project, including estimated completion date.
- (2) An estimate of total commodity requirements for the first year.
- (3) An appraisal as to how the proposed project qualifies in light of the criteria established for project licenses.
- (4) The nature and duration of the business relationship between the applicant and consignee(s) mentioned in the project license application.

An applicant for a project license must submit with his application an ultimate consignee statement in support of the application. This statement is similar to the previously mentioned ultimate consignee statement which accompanies applications for many individual licenses.

A project license application must also meet the following minimum limitations:

- (1) The total value of Positive List shipments is expected to be \$100,000 or more.
- (2) The commodities to be exported represent four or more major commodity groupings, such as rubber, steel products, electrical machinery, non-ferrous metals, and construction machinery.
- (3) At least 40 individual validated licenses each year would be required to export the proposed commodities.

Export clearance procedures for project licenses are described in Section VII below.

b. Other Types of "Bulk" Licenses

(1) Periodic Requirements License (PRL)

This procedure permits the filing of a single application for a license to export an estimated six months' requirements of those Positive List commodities identified by the letter "E" on the Positive List. Exportation under the PRL procedure may be made to one or more approved ultimate consignees in an approved destination. Although the holding of an export order is not a requirement under this procedure, the applicant and his consignees must have a trade relationship with each other of at least two years' duration. This licensing procedure is not applicable to exportations to Hong Kong, Macao, Poland, or Subgroup A countries.

(2) Time Limit License (TL)

This procedure permits exportation of unlimited quantities of all "RO" commodities on the Positive List (except complete aircraft) to consignees in a group O country, either for consumption or resale within the particular country(ies) of ultimate destination or, when certain requirements are met, for reexportation to another group O country. A single application may cover a group of related commodities only. Under this procedure, the applicant and his consignees must have a two-year trade relationship, during which period the applicant must have exported at least \$2,000 worth of commodities in the group to each consignee.

(3) Blanket License (BLT)

This procedure permits the filing of a single application when shipments of the same commodity are going to two or more consignees in the same country of destination. A list of the proposed consignees and, where applicable, an ultimate consignee statement, or import certificate, for each proposed consignee, must accompany a BLT License application.

H. Import Certificate-Delivery Verification ("IC/DV") System

In 1952 the United States instituted a new export control mechanism designed as a deterrent to transshipment or diversion of strategic commodities to the Soviet bloc. The new mechanism, worked out in cooperation with Canada and the principal nations of Western Europe, Turkey, and Japan, has become known as the Import Certificate-Delivery Verification System (or simply "IC/DV").

Under this procedure, where required by the exporting country with respect to specific transactions, an import certificate is obtained by the importer from his government. This certificate constitutes an undertaking by the importer that he will import into the economy of his country the commodities involved, and will not divert, transship, or reexport them to another destination

except in accordance with the export control regulations of the importing country. The certificate is witnessed and recorded by authorities of the importer's government. It is then returned to the importer for transmittal, via the exporter, to the exporting government, which normally will not license the shipment in the absence of this documentation. In the event that the importer attempts without prior authorization to transship, reexport, or otherwise divert the material, he becomes subject to legally enforceable penalties imposed by his government as well as such sanctions as the exporting country may apply. As an additional safety factor, the system provides for issuance of a "delivery verification" by the Customs Service of the importing country. This document is an assurance to the exporting government of the actual delivery of the material into the customs territory of the importing country.

I. Ultimate Consignee and Purchaser Statements

Since the number of countries participating in the "IC/DV" System is limited, the United States requires the previously mentioned "ultimate consignee and purchaser statement" to be submitted with each application for an export license covering (a) a shipment to an "IC/DV" participating country if the IC/DV procedure does not apply to the shipment; and (b) any shipment to any other country not located in the Western Hemisphere. The statement must be prepared by the ultimate consignee and submitted to the United States exporter. It must be signed by the purchaser as well as by the ultimate consignee. The ultimate consignee and purchaser statement procedure was adopted (a) because complete disclosure of the ultimate destination and intended use of a proposed shipment is the best way of assuring that United States origin goods will not be illegally reexported; and (b) because experience shows that the receiver of the goods is the best source of this information.

J. Destination Control

United States export control regulations provide that a "destination control statement" must appear on the export declaration, the bill of lading (or air waybill), and the commercial invoice for virtually all commercial exports made under either validated export licenses or general licenses. One of the following three statements may be used, depending upon which is appropriate for the shipment being made:

"These commodities licensed by the United States for ultimate destination (name of country). Diversion

contrary to United States law prohibited."

"These commodities licensed by the United for ultimate destination \_\_\_\_\_ and for distribution or resale in \_\_\_\_\_. Diversion contrary to United States law prohibited."

"United States law prohibits disposition of these commodities to the Soviet bloc, Communist China, North Korea, Macao, Hong Kong, or Communist-controlled areas of Viet Nam and Laos unless otherwise authorized by the United States."

Inclusion of the statement on the bill of lading (or air waybill) and the commercial invoice serves to notify foreign parties and their agents of countries to which reexportation of the U.S.-origin goods has been authorized, and conversely to inform them of their responsibility not to divert U.S.-origin goods to unauthorized destinations. A foreign consignee may dispose of goods in countries not named in the destination control statement only if prior authorization is received from the Bureau of Foreign Commerce through the U. S. exporter.

The destination control statement requirement has been highly effective in preventing unauthorized reexportation of U.S.-origin goods. Experience shows that most traders abroad refrain from unauthorized reexportation of U.S.-origin goods when they note a destination control statement on the bill of lading or commercial invoice. Foreign traders, forwarding agents, and others, who despite the destination control statement, illegally divert U.S.-origin commodities, are subject to action which may deny them the privilege of purchasing or receiving United States goods in the future.

K. Technical Data Controls

The Export Control Act provides authority for controlling the exportation of technical data as well as commodities. Such control is a necessary adjunct to the control of commodities.

Validated export licenses are required for technical data not generally available in published form for shipment to Soviet bloc destinations. However, certain types of technical data may be shipped to all destinations, including Soviet bloc destinations, without a validated license, under the provisions of general license GTDP and GTDS.

General License GTDP permits shipment to all destinations of unclassified technical data generally available in published form, provided such technical data (1) are sold at newsstands or bookstores, or (2) are available by subscription or purchase without restrictions to any person or available without cost to any person; or (3) are granted second class mailing privileges by the United States Government; or (4) are freely available at public libraries.

General License GTDS permits shipment to all destinations of unclassified scientific and educational technical data involving: (1) information not directly and significantly related to design, production, and utilization in industrial processes, including dissemination of such data by correspondence and attendance at, or participation in, meetings; or (2) instruction in academic institutions and academic laboratories.

A third General License, GTDU, permits shipment of most types of unclassified technical data, either unpublished or not generally available in published form, to destinations other than Soviet bloc countries and Poland. However, because of the security implications that may be involved in the exportation of advanced technical data, the Bureau of Foreign Commerce maintains a voluntary procedure under which United States persons or firms are encouraged to obtain official United States Government opinion as to the desirability of exporting or releasing for use in friendly foreign countries certain types of unpublished technical data which may be considered as having significance to the common security and defense of the United States.

The Bureau of Foreign Commerce has stressed the need for continued cooperation of American industry in this voluntary procedure, particularly where the technical data proposed for export or release are concerned with (1) advanced developments, technology, and production "know-how," (2) prototypes, and (3) special installations.

L. Bunkering Controls

There is a general license which, among other things, permits vessels and planes to take on fuel and other petroleum stores in the United States. However, a validated export license is required for these items in the case of foreign vessels and planes which have called at a Far Eastern Communist port within a specified period, or which will call at or intend to carry cargo directly or indirectly to such a port within a specified period.

Vessels or planes registered in or controlled by any Subgroup A country or Poland are subject to the same licensing requirements. These regulations over foreign flag vessels and planes supplement regulations, administered by the Department of Commerce, which prohibit United States vessels and planes from calling at any Chinese Communist port or to any other place under the control of the Chinese Communists, or from carrying goods intended for direct or indirect delivery to such ports (Transportation Order T-2). In addition, Transportation Order T-1 prohibits ships and aircraft of American registry from transporting Positive List commodities, arms, ammunition and implements of war, or any item controlled for export under the Atomic Energy Act of 1946, to any port in Subgroup A, Hong Kong, or Macao, or from discharging such commodities at any such port or at any other port in transit to such destination unless a specific export license has been issued or the Under Secretary for Transportation has authorized the Transportation.

M. Controls over Foreign Origin Shipments Moving Intransit Through the United States

A general license known as "GIT" has been established which permits exportation of commodities of foreign origin moving intransit through the United States. However, General License GIT does not apply to shipments moving to Hong Kong, Macao, Poland, or a Subgroup A country unless the shipment could be exported to those destinations under another general license were it of United States origin. If General License GIT does not apply, a foreign origin intransit shipment may move to its intended destination only if a validated export license is obtained.

VII. CLEARANCE OF EXPORTATIONS BY COLLECTORS OF CUSTOMS

The United States Customs Service performs the important function of assuring that export shipments (other than exports by mail) are made strictly in accordance with export control regulations.

The export control activities of the Customs Service are divided into three categories: (1) "documentary control"; (2) physical examination of export shipments; and (3) appropriate action against violators of export control regulations, including seizure of merchandise.

A. Documentary Control Activities

The two principal documents used by the Customs Service in clearing export shipments are the export license and the Shipper's

Export Declaration. The export license has been previously discussed. The export declaration is a document on which the exporter "declares" his shipment -- in other words, tells the Government what and how much he is shipping, to whom he is shipping, and to what country he is shipping. The declaration also includes other pertinent information, such as gross weight, marks and numbers of the packages, name of the exporter's forwarding agent, name of the intermediate consignee, etc. The declaration is a "statistical document" as well as an export control document, since the Census Bureau of the Department of Commerce uses the information on the declaration to compile statistics on United States foreign trade.

If an exporter is shipping a commodity which requires an export license, he must present the license and a Shipper's Export Declaration to the Collector of Customs. If he is making a shipment which does not require a license, he presents only the Shipper's Export Declaration to the Collector.

The principal phases of the Collector's "documentary control" activities are as follows:

1. If the exporter is attempting to ship under a general license -- i.e., presents only an export declaration -- the Collector must make sure that the shipment meets the terms of the general license and does not require a validated license.
2. If the exporter presents an export license as well as an export declaration, the Collector must compare the two documents to ascertain that the "declared" shipment is within the terms of the license.
3. The Collector must also:
  - a. Make sure that the Shipper's Export Declaration is properly prepared in all respects.
  - b. Make sure that the declaration is signed and presented by the exporter or his authorized forwarding agent.
  - c. See to it that exportations are not made by parties suspended from the privilege of exporting. (See Section VIII).
  - d. See that the exporter has complied with any special instructions on the face of the license and that he has met all other requirements.

- e. Make a record of shipments against an export license (on the reverse side of the license document).
4. Project Licenses constitute an exception to the rule that licenses must be presented to the Collector of Customs. In clearing a shipment against a Project License, the Collector checks a list of Project License holders supplied by the Bureau of Foreign Commerce to confirm (a) that the shipper has a Project License and is shipping to the authorized consignee(s) and country(ies) and (b) that the declaration is correctly prepared. An extra copy of the declaration is presented to the Collector who, in turn, forwards it to the Bureau of Foreign Commerce. The latter agency checks the declarations on an ex-post facto basis to make sure that the licensees are exporting within the terms of their licenses.

B. Physical Examination of Merchandise

On a spot-check basis, Customs inspectors physically examine merchandise to make sure that only the declared commodities are being exported. Up to the time this inspection takes place, proposed exports have been checked only against documents. The Customs inspectors see the merchandise itself and decide whether it conforms to the specifications on the export license and export declaration.

C. Actions Against Violators

Actions taken by the Customs Service against violators are summarized in Section VIII, "Prevention, Investigation, and Punishment of Violations."

VIII. PREVENTION, INVESTIGATION, AND PUNISHMENT OF VIOLATORS

A vigorous enforcement program is conducted to assure effective administration of U.S. export controls. This program consists partially of educational activities to prevent violations and partially of a program involving criminal prosecution and administrative proceedings against those who violate these controls. To prevent violations, the Bureau of Foreign Commerce undertakes a number of measures, such as the following:

1. A continuous flow of information is directed at firms and persons engaged in the export trade with a view to making such persons fully aware of the provisions of export control regulations.

2. Press releases, articles in trade publications, special circulars, and special notices in Current Export Bulletins are among the methods used to keep the export trade fully aware of their responsibilities under export control regulations.
3. Export control officials frequently attend conventions and other meetings of foreign traders. These contacts afford an effective opportunity to seek maximum cooperation from the trade in achieving the objectives of the export control program.
4. As previously stated, a destination control statement is required on export declarations, bills of lading, and commercial invoices covering most commercial exportations.
5. Spot-checks of export declarations, bills of lading, etc., are conducted to determine the extent of compliance with particular regulations. The results of these spot-checks may serve as a basis for "warning" specific exporters that they have violated a given regulation.

Investigation of violations and institution of action against suspected violators is primarily the responsibility of the Investigation Staff of the Bureau of Foreign Commerce, with the advice and assistance of the General Counsel's Office. The Investigation Staff continuously gathers and sifts information obtained from such sources as: parties to the export transaction, their business competitors, the United States Foreign Service, United States Government intelligence agencies, licensing officers in the Bureau of Foreign Commerce, Collectors of Customs, Customs agents, etc. Each bit of original information regarding a potential violation of export control regulations is examined and any information which appears to relate to a significant violation may develop into a full-fledged investigation conducted both in the United States and abroad.

To fix responsibility for violations and to determine the extent or type of violation, it is often necessary to trace the actual movement of goods from the United States to its ultimate destination. In this phase of an investigation, all pertinent documents are obtained and information thereon is evaluated. Exporters, freight forwarders, carriers, customs brokers, banks, and suspected individuals and company officials may be interrogated, and any pertinent documentary evidence in their possession may be requested. Parties, and their books and records, within the jurisdiction of the U.S. are subject to subpoena.

A U.S. foreign service post may be asked to assist in an investigation by obtaining information or copies of key documents from an ultimate or intermediate consignee, a bank, or some other foreign party participating in the transaction, or from foreign Customs officials

or other sources. In some cases foreign service posts obtain information on their own initiative regarding unauthorized diversions of U. S. origin commodities or other types of violations; and this information, when forwarded to the Investigation Staff, may result in the opening of an investigation.

When an investigation is completed, the Director of the Investigation Staff, with the advice and assistance of the Office of the General Counsel of the Department of Commerce, may institute administrative proceedings against the violators, or take such other action as appears justified in the light of facts developed by the investigation. When appropriate, the General Counsel's office prepares cases for referral to the Department of Justice for criminal prosecution.

If administrative proceedings are instituted against the alleged violator, a formal written charging letter is sent to him describing the alleged violation and requiring that he answer the charges. Unless the alleged violator admits the charges, a formal hearing on the charges is arranged before a hearing officer called a "Compliance Commissioner," who is an official of the Bureau of Foreign Commerce.

In the proceedings before the Compliance Commissioner, the prosecution is handled by the General Counsel's office for and on behalf of the Investigation Staff. The accused may appear personally and usually he is represented by a lawyer of his own choice. The proceedings include a hearing on evidence of the alleged violation and evidence of the alleged offender, including what may be submitted in defense or mitigation. The Compliance Commissioner, in light of information presented at the oral hearing, makes a finding as to whether there has been a violation of the regulations. If he decides negatively, no further action is taken by the Bureau of Foreign Commerce. If the Commissioner determines that there has been a violation, he recommends to the Director of the Office of Export Supply the remedial action which he, the Commissioner, deems suitable. The Director reviews the entire record of the proceedings, and, if he agrees with the Compliance Commissioner that violations have occurred, he may issue an order denying to the violator all privileges of participating in export transactions involving United States commodities and technical data for a specified length of time. Depending upon the gravity of the offense and other factors, the duration of this suspension of privileges may run from a few days upward to a maximum of "the duration of United States export controls." This procedure is applicable to foreign as well as domestic firms. Parties who are denied privileges have a right of appeal to a Department of Commerce appeals board. Compliance proceedings are not publicized until a denial order is issued by the Bureau of Foreign Commerce, in order to protect the parties in the interim.

In an effort to keep the export community constantly aware of the parties who have been denied export privileges as a result of compliance actions, and who cannot thereby engage in any export transactions, a list of all current suspension orders is maintained and distributed as a part of the Comprehensive Export Schedule, press releases are issued, and orders are published in the Federal Register.

In addition to the administrative sanctions imposed in the compliance proceedings described above, criminal penalties may be imposed for aggravated violations of United States export controls. In any such instance, the entire case, with all related evidence, is referred to the United States Department of Justice for criminal prosecution of the offender. Fines and prison sentences have been imposed by United States Courts for such criminal violations.

Other actions which may be taken by the Bureau of Foreign Commerce apart from formal compliance action, include recall of shipments and issuance of warning letters. In addition, whenever, during the course of an investigation, or an administrative or criminal proceeding, the Director, Office of Export Supply, determines that it is in the public interest, he may summarily, without notice, issue an order temporarily denying all export privileges to suspected violators, either in the United States or abroad, to remain in effect for 30 days or until the completion of the investigation or the other proceedings.

Bureau of Foreign Commerce actions against violators are supplemented by various actions which may be taken by Collectors of Customs, either on their own initiative or at the request of the Bureau of Foreign Commerce. These include: (1) the issuance of orders to prevent lading aboard the exporting carrier of a shipment believed to be in violation of export control regulations; (2) detention and/or seizure of shipments found to be in violation of the regulations; (3) detention and seizure of an exporting carrier being used to export a shipment in violation of the regulations; (4) orders to unlade from the exporting carrier a shipment believed to violate the regulations; (5) issuance of formal or informal warnings to exporters involved in violations; and (6) issuance of an order to a carrier to return to the United States a shipment which has been exported in violation of the regulations.

Investigators of the Customs Agency Service -- the enforcement branch of the Customs Service -- are often asked by the Bureau of Foreign Commerce Investigation Staff to assist in an investigation. In some cases, the Customs investigators initiate their own investigations of alleged export control violations. Such an investigation may result in one or more of the six types of actions set forth above. If the alleged violation is serious enough, the Bureau of Foreign Commerce may institute administrative proceedings against the party or parties involved.

U. S. DEPARTMENT OF COMMERCE  
BUREAU OF FOREIGN COMMERCE  
Washington 25, D. C.

ADDENDA TO BRIEFING PAMPHLET

Since publication of this Briefing Pamphlet, the Bureau of Foreign Commerce has issued Current Export Bulletin No. 840, dated October 19, 1960, which announced a change in United States export licensing policy to Cuba. As a result of this revised policy, some of the statements in the Briefing Pamphlet are no longer entirely accurate. Accordingly, the following corrections should be made as indicated:

PEN AND INK CHANGES

Page No.

- 10 - Para. E                    At end of line 4, add: "Cuba, to"
- Para. F-1                Line 2, following the words "Hong Kong, Macao," delete the word "and"
- Line 3, following the words "Subgroup A," add: "and Cuba,"
- Line 5, following the words "to Poland," delete "Cuba"
- Para. F-2                Line 2, following the word "country", add: ", except Cuba,"
- Para. F-3                Line 2, following the word "Poland," delete: "or", and following the word "country," add: or Cuba,"
- Footnote                Lines 2 and 3, delete: "Cuba and"
- 11 - Para. F-4                Line 4, following the words "under GHK" add: "or GLV."

Add a new subparagraph numbered 6 between present subparagraphs 5 and 6 as follows:

6. General License GCU

This general license authorizes exportation to Cuba of certain medicines, medical supplies, and non-subsidized foodstuffs. Since General Licenses GRO, GO, GLV, GTF, GLR (in part), GATS (in part), GMS, and GTDU, may not be used for exports to Cuba, any commodity not falling under the provisions of GCU or those remaining general licenses which are applicable to Cuba, requires a validated license for shipment to Cuba.

Para. F-6                    Renumber present 6 to 7

PEN AND INK CHANGES (Cont.)

Page No.

11 - cont.

Para. F-7           Line 4, after the words "personal baggage;" add:  
                      "GIFT 1/"

Bottom of Page     Add the following footnote: "1/ General License Gift may  
be used only for items normally sent as gifts. It  
specifically excludes the sending of military clothing  
in a gift parcel to Cuba, Hong Kong, Macao, or Subgroup A  
countries."

18 - Para. b(1)     At the end of the paragraph add a new sentence:  
"At the present time no PRL Licenses are being granted  
for Cuba."

Para. b(2)           At the end of the paragraph add a new sentence:  
"At the present time no TL Licenses are being granted  
for Cuba."

21 - Para. J         In the third destination control statement, 3rd line  
following the words "Hong Kong," delete the word "or";  
in the 4th line following the word "Laos" add: ", or  
Cuba".

Para. K             Paragraph 2, line 2, following the words "for shipment  
to" add: "Cuba and"; line 4, following the last word  
add: ", and Cuba,"

22 - Para. K         In the 3rd paragraph, 4th line, following the words  
"bloc countries", delete "and"; following the word  
"Poland" add: ", and Cuba".

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Annex 2

*Appendix II*

*27m*

UNITED STATES GOVERNMENT

# Memorandum

TO : G/PM - Mr. Meyers

DATE: November 18, 1964

FROM : MC - John W. Sipes *JWS*

SUBJECT: Legislative and Regulatory Structure for Control of the International Traffic in Arms by the Office of Munitions Control.

In accordance with your telephonic request today, the following information is set forth. The International Traffic in Arms Regulations of the Department of State were promulgated on March 1, 1960, and published in the Federal Register of March 2, 1960, (22 C.F.R. 121 et seq). Copy of the Regulations is attached at TAB A.

The International Traffic in Arms Regulations are based upon Section 414 of the Mutual Security Act of 1954, as amended, (Title 22, U.S.C. Section 1934). This Act confers upon the President authority to control, in the furtherance of world peace and the security and foreign policy of the United States, the export and import of arms, ammunition and implements of war, including technical data relating thereto. The text of the Act is attached at TAB B.

In pursuance of Section 414 the President, by Executive Order, conferred these functions upon the Secretary of State. The pertinent sections, i.e. Section 105 of Executive Order 10973 (26 F.R. 10469), are set forth at TAB C. It should be noted that the Executive Order provides that the Secretary of State in carrying out these functions delegated by the President, shall consult with appropriate agencies of the Government; and that in designating the articles which shall be considered arms, ammunition and implements of war, i.e. the United States Munitions List, the concurrence of the Secretary of Defense is required.

The Office of Munitions Control has the functional responsibility within the Department of State for administering the International Traffic in Arms Regulations and, in general, to exercise the authority vested in the President in Section 414 of the Mutual Security Act of 1954. This delegation is evidenced by Delegation of Authority No. 104-3 and Re-Delegation of Authority No. 104-3-A (28 F.R. 7231). Copies of these documents are attached at TAB D.

Attachments:

As Stated.



*Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan*

Your attention is invited to the attached revisions of the Department of State regulations, effective March 1, 1960, governing the export and import of United States Munitions List items.

Additional sets of these regulations will be furnished upon request to the Office of Munitions Control, Department of State, Washington 25, D.C.

Errata (underscoring added to indicate changes):

- Part 121.01 - Category VIII, (e), line 1 should read:  
"Non-expansive balloons ..."
- Part 121.01 - Category XIII, (c), line 4 should read:  
"(See 123.62 for exemptions)"
- Part 121.02 - Line 1 should read: "As used in 123.03 (c)..."
- Part 121.05 - (1) should read: "Electric squibs"
- Part 121.08 - First line should read: "(See Category XIV (a))"
- Part 121.09 - Under "Other liquid propellant compositions..." subparagraph (2) should read: "Bi-propellants (hydrazine, fuming nitric acid (HNO<sub>3</sub>))"
- Part 122.02 - (a), line 3 should read: "on Form DSP-9..."
- Part 123.09 - Line 7 should read: "(United States Department of Commerce form 7525-V)"
- Part 125 - Under Export Control Requirements add "125.21  
Government Agency Shipments"
- Part 125.20 - (b), beginning line 14, sentence should read:  
"If the patent application is covered by a security order, all questions relating thereto should be addressed to the Patent Office."

*Sub A*



# INTERNATIONAL TRAFFIC IN ARMS

Regulations as Amended, March 1, 1960

(Reprinted from the Federal Register of March 2, 1960)

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THE DEPARTMENT OF STATE

# Title 22—FOREIGN RELATIONS

## Chapter I—Department of State

[Dept. Reg. 108.425]

### SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS

#### REVISION OF SUBCHAPTER

Subchapter M of the regulations of the Secretary of State issued August 26, 1955, as amended, is hereby rescinded in its entirety and is replaced by the following parts:

#### PART 121—ARMS, AMMUNITIONS, AND IMPLEMENTS OF WAR

##### ENUMERATION OF ARTICLES

###### Sec.

121.01 The United States Munitions List.

##### DEFINITIONS AND INTERPRETATIONS

- 121.02 Substantial transformation.  
121.03 Firearms.  
121.04 Cartridge and shell casings.  
121.05 Military demolition blocks and blasting caps.  
121.06 Apparatus and devices under Category IV (b).  
121.07 Amphibious vehicles.  
121.08 Chemical agents.  
121.09 Propellants.  
121.10 Military high explosives.  
121.11 Military fuel thickeners.  
121.12 Vessels of war and special naval equipment.  
121.13 Aircraft and related articles.  
Sec.  
121.14 Helium gas.  
121.15 Forgings, castings, and machined bodies.

**AUTHORITY:** §§ 121.01–121.15, issued under sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934, sec. 103, E.O. 10575, 19 F.R. 7251, 3 CFR, 1954 Supp.

##### ENUMERATION OF ARTICLES

§ 121.01 The United States munitions list.

Pursuant to the authority cited supra the following articles<sup>1</sup> are hereby designated as arms, ammunition and implements of war.

##### Category I—Firearms

- (a) Non-automatic and semi-automatic firearms, calibers .22 to .50 inclusive, except those using only caliber .22 rim-fire ammunition. Barrels, cylinders and complete breech mechanisms therefor (See §§ 121.03, 123.03 and 123.51).  
(b) Automatic firearms and all components and parts therefor, calibers .22 to .50 inclusive (See §§ 121.03 and 123.03).  
(c) Firearms silencers.

##### Category II—Artillery and Projectors

- (a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.  
(b) Military flame throwers and projectors.  
(c) Components and parts including, but not limited to mounts and carriages for the articles in paragraphs (a) and (b) of this Category.

<sup>1</sup> The term "article" shall mean any of the arms, ammunition and implements of war enumerated in the United States Munitions List.

##### Category III—Ammunition

- (a) Ammunition for the arms in Categories I and II of this Section except caliber .22 rim-fire ammunition (See § 123.03).  
(b) The following components, parts, accessories, and attachments: cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun), projectiles, boosters, percussion caps, fuzes and components therefor, primers, and other detonating devices for such ammunition (see exemption in § 121.04).  
(c) Ammunition belting and linking machines.

##### Category IV—Bombs, Guided Missiles, Rockets, Torpedoes, and Mines

- (a) Bombs, grenades, rockets, guided missiles, torpedoes, depth charges, land and naval mines, and military demolition blocks and blasting caps (See § 121.05).  
(b) Apparatus and devices for the handling, control, activation, detection, discharge or detonation of the articles in paragraph (a) of this Category (See § 121.06).  
(c) Missile powerplants.  
(d) Military explosives, excavating devices.  
(e) All specifically designed components, parts, and associated equipment for the articles in this Category.

##### Category V—Propellants, Explosives, and Incendiary Agents

- (a) Propellants for the articles in Categories III and IV of this Section (See § 121.09).  
(b) Military high explosives (See § 121.10).  
(c) Military fuel thickeners (See § 121.11).  
(d) Military pyrotechnics.

##### Category VI—Vessels of War and Special Naval Equipment

- (a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels, service craft, floating dry docks, and experimental types of naval ships (See § 121.12).  
(b) Turrets and gun mounts, missile systems, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments and accessories specifically designed for the following types of combatant vessels: battleships, command ships, guided missile ships, cruisers, aircraft carriers, destroyers, frigates, escorts, minesweepers, and submarines.  
(c) Submarine and torpedo nets, and mine sweeping equipment. Components, parts, attachments and accessories specifically designed therefor.  
(d) Harbor entrance magnetic, pressure, and acoustic detection devices, controls and components thereof.

##### Category VII—Tanks and Ordnance Vehicles

- (a) Military type armed or armored vehicles, military railway trains, and vehicles fitted with mountings for arms.  
(b) Military tanks, tank recovery vehicles, half-tracks, and gun carriers.  
(c) Military trucks, trailers, hoists, and skids specifically designed for carrying and handling the articles in paragraph (a) of Categories III and IV; military mobile repair shops specifically designed to service military equipment.  
(d) Amphibious vehicles (See § 121.07).  
(e) All specifically designed components, accessories and attachments, including military bridging for the articles in this Category.

##### Category VIII—Aircraft and Associated Equipment

- (a) Aircraft designed, modified or equipped for military purposes, including but not limited to the following: gunnery, bombing, rocket, or missile launching, electronic surveillance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, military trainers, experimental aircraft, drones, lighter-than-air aircraft, and military helicopters (See § 121.13, paragraph (b) for exceptions).  
(b) Military aircraft engines, other than reciprocating, specifically designed for the aircraft in paragraph (a) of this Category.  
(c) Airborne equipment, including but not limited to JATO and airborne refueling equipment, specifically designed for use with the aircraft and engines of the types in paragraphs (a) and (b) of this Category.  
(d) Aircraft launching equipment.  
(e) Non-expensive balloons in excess of 3,000 cubic feet capacity.  
(f) Components, parts, and associated equipment except propellers specifically designed for the articles in paragraphs (a) through (e) of this Category.  
(g) Parachutes and complete canopies, harnesses and platforms, and electronic release mechanisms therefor.

##### Category IX—Military Training Equipment

- (a) Military training equipment includes but is not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, anti-submarine warfare trainers, target equipment, armament trainers, pilotless aircraft trainers, mobile training units; and military type link trainers, operational flight trainers, flight simulators, radar trainers, instrument flight trainers, and navigation trainers.  
(b) Components, parts, attachments and accessories specifically designed for the articles in paragraph (a) of this Category.

##### Category X—Protective Personnel Equipment

- (a) Body armor, flak suits, and components and parts specifically designed therefor and military helmets.  
(b) Partial pressure suits, pressurized breathing equipment, anti-"G" suits, protective clothing for handling guided missile fuel, military crash helmets, liquid oxygen converters used for aircraft and missiles, catapults and cartridge actuated devices utilized in emergency escape of personnel from aircraft.

##### Category XI—Military Electronics

- (a) Electronic equipment bearing a military designation including radar, jamming, countermeasure, counter countermeasure, underwater sound, doppler and communications-electronic equipment.  
(b) Components, parts, accessories and attachments specifically designed for use with the articles in (a) of this Category.

##### Category XII—Fire Control Equipment and Range Finders

- (a) Fire control, gun and missile tracking and guidance systems infra-red and other night sighting equipment; range, position and height finders and spotting instruments, aiming devices (electronic, gyroscopic, optic, and acoustic), bomb sights, bombing computers, military television sighting units, inertial platforms, and periscopes for the articles of this section.  
(b) Inertial guidance systems, astro compasses, and star trackers.  
(c) Components, parts, accessories, attachments, and associated equipment specifically designed for the articles in paragraph (a) of this Category.

### Category XIII—Auxiliary Military Equipment

(a) Aerial cameras and special purpose military cameras and specialized processing equipment therefor; military photointerpretation, stereoscopic plotting, and photogrammetry equipment.

(b) Cryptographic devices (encoding and decoding), and specifically designed components therefor.

(c) Self-contained diving and underwater swimming apparatus and components and accessories specifically designed therefor (See § 123.63 for exemptions).

(d) Armor plate.

(e) Concealment and deception equipment, including but not limited to special paints, decoys and simulators; components, parts and accessories specifically designed therefor.

### Category XIV—Toxicological Agents

(a) Chemical agents, including lung irritants, vesicants, lacrimators and tear gases, sternutators and irritant smokes, and nerve gases (See § 121.08).

(b) Biological agents adapted for use in war to produce death or disablement in human beings or animals or to damage crops.

(c) Equipment for the dissemination, detection and identification of, and defense against the articles in paragraphs (a) and (b) of this Category.

(d) Components, parts, attachments and accessories specifically designed for the articles in paragraph (c) of this Category.

### Category XV—Helium Gas

Contained Helium and admixtures thereof (See § 121.14).

### Category XVI—Classified Material

All material not enumerated herein which is classified from the standpoint of military security.

### Category XVII—Technical Data

Technical data relating to the articles designated in this subchapter as arms, ammunition, and implements of war.

### DEFINITIONS AND INTERPRETATIONS

#### § 121.02 Substantial transformation.

As used in § 123.03(d) the term "substantially transformed" shall refer to the reiteration of firearms abroad to accomplish the following changes:

(a) As applied to rifles and carbines, the changes must have included at least either (1) re-chambering for a lower or higher caliber cartridge or (2) installation of a new action.

(b) As applied to pistols and revolvers, the changes must have included at least either (1) re-chambering or (2) modification of the cylinders for the accommodation of a lower or higher caliber cartridge.

(c) Other changes, such as rebarreling, modification of stocks or grips, rebluing, or replacing of sights, singly or together, are not sufficient to so substantially transform the weapons as to become, in effect, articles of foreign manufacture.

#### § 121.03 Firearms.

Rifles, carbines, revolvers and pistols, calibers .22 to .50 inclusive, except those using only caliber .22 rimfire ammunition, are included under Category I(a). Machine guns, submachine guns, machine pistols and fully automatic rifles

caliber .22 to .50 inclusive are included under Category I(b).

(a) As used in this subchapter the term "firearm" denotes a weapon not over .50 caliber discharging bullets by an explosive force.

(b) A rifle is a shoulder firearm discharging bullets through a barrel with a rifled bore at least sixteen inches in length.

(c) A carbine is a light weight shoulder firearm with a short barrel, under eighteen inches in length.

(d) A pistol is a hand-operated firearm designed for clip loading.

(e) A revolver is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.

(f) A machine gun or machine pistol is a firearm capable of being fired automatically by a single pull of the trigger.

(g) A breech mechanism or action is that portion of the weapon in which the firing action takes place.

#### § 121.04 Cartridge and shell casings.

Cartridge and shell casings which have been sold by the armed services as scrap, or which have been rendered useless by excessive heating or flame treatment, mangling, crushing or cutting or reduced to scrap by any other method are not subject to the export and import licensing authority of the Department of State.

#### § 121.05 Military demolition blocks and blasting caps.

The term "military demolition blocks and blasting caps" does not include the following articles:

- (1) Electric squibs,
- (2) No. 6 and No. 8 blasting caps, including electric,
- (3) Delay electric blasting caps (including Nos. 6 and 8 millisecond),
- (4) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).

#### § 121.06 Apparatus and devices under category IV(b).

Category IV(b) includes inter alia the following: Fuses and components thereof, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, launching racks, and projectors, pistols (exploders), igniters, fuse arming devices, and the following items related thereto, intervalometers and components therefor, guided missile launchers and specialized handling equipment.

#### § 121.07 Amphibious vehicles.

As used in Category VII(d), the term "amphibious vehicles" includes but is not limited to automotive vehicles or chassis embodying all-wheel drive and equipped to meet special military requirements, with adaptation features for deep-water fording and sealed electrical systems.

#### § 121.08 Chemical agents.

(See Category XV(a).)

A chemical agent is a substance useful in war which, by its ordinary and direct

chemical action, produces a powerful physiological effect. The term "chemical agents" includes but is not limited to the following chemical compounds:

1. Lung Irritants:
  - (a) Carbonyl chloride (Phosgene, CG).
  - (b) Chlorine (CL).
  - (c) Cyanogen chloride (CK).
  - (d) Diphenylcyanoarsine (DC).
  - (e) Diphosgene (DP).
  - (f) Fluorine (but not fluorene).
  - (g) Trichloronitro methane (Chlorpicrin, PS).
2. Vesicants:
  - (a) B. chlorvinylidichlorarsine (Lewisite, L).
  - (b) Bisdichloroethyl sulphide (Mustard gas, HD or H).
  - (c) Ethyldichlorarsine (ED).
  - (d) Methyldichloroarsine (MD).
3. Lacrimators and Tear gases:
  - (a) Brombenzylcyanide (BBC).
  - (b) Chloroacetophenone (CE).
  - (c) Dibromodimethyl ether.
  - (d) Dichlorodimethyl ether (ClCl).
  - (e) Ethyldibromoarsine.
  - (f) Phenylcarbylamine chloride.
  - (g) Tear gas solutions (CNB and CNS).
4. Sternutators and irritant smokes:
  - (a) Diphenylaminechloroarsine (Adamsite, DM).
  - (b) Diphenylchlorarsine (BA).
5. Nerve gases. These are toxic compounds which affect the nervous system, such as:
  - (a) Dimethylaminoethoxycyanophosphine oxide (GA).
  - (b) Methylisopropoxyfluorophosphine oxide (GB).
  - (c) Methylpinacolyloxyfluorophosphine oxide (GD).

#### § 121.09 Propellants.

The term "propellants" includes but is not limited to the following:

- Propellant powders including smokeless shotgun powder,
- Hydrazine,
- Unsymmetrical dimethylhydrazine,
- Hydrogen peroxide over 85 percent concentration,
- Nitroguanidine or picrite,
- Nitrocellulose with nitrogen content of over 12.20 percent.
- Other solid propellant compositions, including but not limited to the following:
- (1) Single base (nitrocellulose),
  - (2) Double base (nitrocellulose, nitroglycerin),
  - (3) Triple base (nitrocellulose, nitroglycerin, nitroguanidine),
  - (4) Composite (nitroglycerin, ammonium perchlorate, nitrocellulose with plastics or rubbers added),
  - (5) Special purpose chemical base high energy solid military fuels.
- Other liquid propellant compositions, including but not limited to the following:
- (1) Mono-propellants (hydrazine, nitrate, and water),
  - (2) Bi-propellants (hydrazine, fuming nitric acid (MNOS)),
  - (3) Special purpose chemical base high energy liquid military fuels.

#### § 121.10 Military high explosives.

The term "military high explosives" includes but is not limited to the following:

- (a) Ammonium picrate,
- (b) Black soda powder,
- (c) Cyclotetramethylene-tetranitramine (HMX),
- (d) Cyclotrimethylene-trinitramine (RDX, Cyclonite, Hexogen or T4),
- (e) Dinitronaphthalene,

- (f) Ethylenedinitramine,
- (g) Hexanitrodiphenylamine,
- (h) Nitroglycerin,
- (i) Nitrostarch,
- (j) Pentaerythritol tetranitrate (penthrite, pentrite or PETN),
- (k) Potassium nitrate powder,
- (l) Tetranitronaphthalene,
- (m) Trinitroanisole,
- (n) Trinitronaphthalene,
- (o) Trinitrophenol (Picric acid),
- (p) Trinitrophenylmethyl-nitramine (Tetryl),
- (q) Trinitrotoluene (TNT),
- (r) Trinitroxylyene,
- (s) Ammonium perchlorate nitrocellulose (military grade).

#### § 121.11 Military fuel thickeners.

The term "military fuel thickeners" includes: compounds (e.g., octal) or mixtures of such compounds (e.g., napalm) specifically formulated for the purpose of producing materials which, when added to petroleum products, provide a jelly-type incendiary material for use in bombs, projectiles, flame throwers or other implements of war.

#### § 121.12 Vessels of war and special naval equipment.

(See Category VI.)

The term "vessels of war" includes but is not limited to the following:

- (a) *Combatant*—
- (1) *Warships*:  
Aircraft Carriers (CVA, CVE, CVHE, CVL, CVS),  
Battleships (BB, BBG),  
Command Ships (CBC, CLC),  
Cruisers (CA, CAG, CB, CG, CL, CLAA, CLG),  
Destroyers (DD, DDC, DDE, DDG, DDR, DL, DLG),  
Submarines, (SS, SS(N), SSB, SSG, SSK, SSR).
- (2) *Amphibious Warfare Vessels*:  
Amphibious Assault Ship (LPH),  
Amphibious Force Flagship (AGC),  
Assault Helicopter Aircraft Carrier (CVHA),  
Attack Cargo Ship (AKA),  
Control Escort Vessel (DEC),  
Cargo Submarine (AK(SS)),  
Inshore Fire Support Ship (IFS),  
Landing Ships (LSD, LSFF, LSL, LSM, LSMR, LSSL, LST),  
Transport Submarine (AP(SS)),  
Transports (APA, APD).
- (3) *Landing Craft (LCC, LCM, LCP, LCR, LCS, LCU, LCV, LCVP)*,  
(4) *Landing Vehicle, Tracked (LVT)*,  
(5) *Mine Warfare Vessels*:  
Mine Hunter, Coastal (MHC),  
Mine Countermeasures Support Ship (MCS),  
Minelayers (DM, MMA, MMC, MMF),  
Minesweepers (DMS, MSC, MSC(O), MSF, MSO, MES).
- (6) *Patrol Vessels*:  
Escort Vessels (DE, DER, PCS, PCER, PF),  
Gunboats (PCM, PR),  
Submarine Chasers (PC, PCS, SC),  
Yacht (PY).
- (b) *Auxiliary Vessels and Service Craft*:  
(1) Advanced Aviation Base Ship (AVB),  
(2) Auxiliary Submarine (AG(SS)),  
(3) Cable Repairing or Laying Ship (ARC),  
(4) Degaussing Vessel (ABG),  
(5) Distilling Ship (AW),  
(6) Drone Aircraft Catapult Control Craft (YV),  
(7) Floating Dry Docks, Cranes, and Associated Workshops and Lighters (AFDB, AFDL, AFDM, ARD, YD, YFD, YFMD, YR,

- YRDH, YRDM, YHL, YSD),  
(8) Floating Pile Driver (YPD),  
(9) Guided Missile Ship (AVM),  
(10) Harbor Utility Craft (YFU),  
(11) Icebreaker (AGB),  
(12) Logistic Support Ships (AE, AF, AK, AKS, AO, ACE, AOG, AOR, AO(SS), AVS),  
(13) Minecraft (MSA, MEB, NSI, YMP, YMS),  
(14) Miscellaneous Auxiliary (AG, IX, YAG),  
(15) Miscellaneous Cargo Ships (AKD, AKL, AKV, AVT),  
(16) Naval Barges and Lighters (YC, YCF, YCK, YCV, YF, YFB, YFN, YFNS, YFNX, YFP, YFR, YFRN, YFRT, YFT, YG, YGN, YO, YOG, YOGN, YON, YOS, YSR, YTT, YW, YWN),  
(17) Net Laying and Tending Ships (AKN, AN, YNG),  
(18) Oceanographic Research Ship (AGOR),  
(19) Patrol Craft (PT, YP),  
(20) Repair, Salvage, and Rescue Vessels (AR, ARB, ARG, ARL, ARS, ARSD, ARV, ARVA, ARVE, ASR),  
(21) Survey Ships (AGS, AGSC),  
(22) Target and Training Submarine (SST),  
(23) Tenders (AD, AGP, ARST, AS, AV, AVP, YDT),  
(24) Transports and Barracks Vessels (AP, APB, APC, APL, YHB, YRB, YRBM),  
(25) Tugs (ATA, ATP, ATR, YTB, YTL, YTM),  
(26) Dredge (YM),  
(27) Ocean Radar Picket Ship (AGR),  
(28) Submersible Craft (X),  
(29) Utility Aircraft Carrier (CVU).
- (c) *Coast Guard patrol and service vessels and craft*:  
(1) Submarine repair and berthing barge (YRB),  
(2) Labor transportation barracks ship (APL),  
(3) Coast Guard cutter (CGC),  
(4) Gun boat (WPC),  
(5) Patrol craft (WPC, WSC, WPC),  
(6) Sea plane tender (WAVP),  
(7) Ice breaker (WAGB),  
(8) Cargo ship (WAK),  
(9) Buoy tenders and boats (WAGE, WD),  
(10) Cable layer (WARC),  
(11) Lightship (WAL),  
(12) CG tugs (WAT, WXT),  
(13) Radio ship (WAGR),  
(14) Special vessel (WIX),  
(15) Auxiliary vessels (WAG, WAGE),  
(16) Other Coast Guard patrol or rescue craft over 300 horsepower capacity.
- (d) *Air Force craft*:  
(1) Air Force rescue boat.
- (e) *Army vessels and craft*:  
(1) Transportation Corps tug—100 ft. (LT), 65 ft. (ST), T-boat, Q-boat, J-boat, E-boat.  
(2) Barges (BG, BC, BR, BSP, BSPI, BKI, BCF, BBL, BARC, BK),  
(3) Cranes, floating (BD),  
(4) Dry dock, floating (FDL),  
(5) Repair ship, floating (FMS),  
(6) Trainer, amphibious 20-ton wheeled tow boat, inland waterway (LTI, STI).

#### § 121.13 Aircraft and related articles.

(a) The term "aircraft" used in Category VIII of the United States Munitions List means aircraft designed, modified, or equipped for a military function as specified in Category VIII, including so-called "demilitarized" aircraft. Their exportation and importation are subject to the licensing requirements of the Department of State.

(b) Unless specially equipped or modified for military operations, C-54, C-47 and C-46 aircraft are excluded from Category VIII of the United States Munitions List.

#### § 121.14 Helium gas.

The word "helium" shall be understood to mean "contained helium" at standard atmospheric pressure (14.7 pounds per square inch) and 70° Fahrenheit. The term "contained helium" means the actual quantity of the element helium (i.e. 100 percent pure helium) in terms of cubic feet present in a mixture of helium and other gases. Purity determination shall be made by usually recognized methods.

#### § 121.15 Forgings, castings, and machined bodies.

Items in a partially completed state, such as forgings, castings, extrusions, and machined bodies of any of the articles enumerated in the United States Munitions List which have reached a stage in manufacture where they are clearly identifiable as arms, ammunition, and implements of war are considered to be such articles for the purposes of section 414 of the Mutual Security Act, as amended.

### PART 122—REGISTRATION

Sec.	
122.01	Registration requirements.
122.02	Application for registration.
122.03	Certificate of registration.
122.04	Notification of changes in information furnished by registrants.
122.05	Maintenance of records by persons required to register as manufacturers, importers or exporters of United States Munitions List articles.

**AUTHORITY:** §§ 122.01-122.05, issued under sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934, Sec. 103, E.O. 10575, 19 F.R. 7251, 3 CFR, 1954 Supp.

#### § 122.01 Registration requirements.

(a) Persons engaged in the business, within the United States, its territories or possessions, of manufacturing, exporting or importing articles enumerated in the United States Munitions List are required to register with the Secretary of State.

(b) The fabrication of arms, ammunition, and implements of war for experimental or scientific purposes, including research and development, is not considered as manufacture for the purposes of section 414 of the Mutual Security Act of 1954, as amended.

(c) The Department will not generally require the registration of persons whose pertinent business activities are confined to the production, exportation, and importation of unclassified technical data relating to arms, ammunition, and implements of war.

#### § 122.02 Application for registration.

(a) Applications for registration shall be submitted to the Secretary of State on form DPS-9 and shall be accompanied by a registration fee in the form of money order or check payable to the Department of State.

(b) Registration can be effected for periods of one year or four years upon payment of a fee of \$75.00 or \$300.00 respectively, at the option of the registrant.

**§ 122.03 Certificate of registration.**

(a) A certificate of registration valid for one or four years will be issued to the applicant after submission of an application for registration (form DSP-9). Certificates of registration are renewable upon payment of the fee of \$75.00 or \$300.00 for periods of one or four years respectively. Such certificates are not transferable.

(b) When a four year registration fee is paid, a refund for unused years may be granted, if warranted by reason of changed conditions or new facts developed subsequent to the issuance of the registration certificate. A refund for part of a year, however, will not be granted.

**§ 122.04 Notification of changes in information furnished by registrants.**

Registered persons shall notify the Secretary of State of significant changes in the information set forth in their applications for registration, such as the establishment of a foreign associate or the acquisition of a foreign affiliate. Upon receipt of such information, an amended certificate of registration will be issued, if appropriate, without charge. Amended certificates remain valid until the date of expiration of the original certificate.

**§ 122.05 Maintenance of records by persons required to register as manufacturers, importers, or exporters of United States Munitions List articles.**

(a) Persons required to register shall maintain for a period of six years, subject to the inspection of the Secretary of State or any person designated by him, records on the importation and exportation of articles enumerated in the U.S. Munitions List. The Secretary may prescribe a longer or shorter period in individual cases as he deems necessary. Records shall contain all information pertinent to the transaction.

(b) Officers of the Office of Security and the Office of Munitions Control of the Department of State and of the United States Customs Agency Service, Bureau of Customs, Treasury Department, are hereby designated as the representatives of the Secretary of State for the purposes of this section.

**PART 123—LICENSING CONTROLS**

**LICENSE PROCEDURES**

- Sec.
- 123.01 Application for license.
- 123.02 Export license.
- 123.03 Import license.
- 123.04 Intransit license.
- 123.05 Validity and terms of licenses.
- 123.06 License denial, revocation or suspension.
- 123.07 Amendments and alterations.
- 123.08 Ports of exit or entry.
- 123.09 Licenses filed with collectors of customs.
- 123.10 Shipment by mail.
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- 123.12 Export to warehouses or distribution points.
- 123.13 Export of vessels of war.
- 123.14 Repairs or alterations of vessels.

**COUNTRY OF DESTINATION**

- 123.21 Country of ultimate destination.
- 123.22 Shipments to or from certain countries.
- 123.23 Canadian shipments.
- 123.24 Territories, possessions, other areas under United States sovereignty and the Canal Zone.
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**SHIPMENTS BY THE UNITED STATES GOVERNMENT**

- 123.40 Shipment by or to the United States Government.

**EXEMPTIONS FOR ARMS AND AMMUNITION SHIPMENTS**

- 123.51 Obsolete small arms.
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- 123.53 Arms for the use of members of the armed forces.
- 123.54 Sample shipments.

**MISCELLANEOUS EXEMPTIONS**

- 123.60 Border shipments.
- 123.61 Certain helium gas exports.
- 123.62 Scuba equipment.
- 123.63 Propellants and explosives.
- 123.64 Smokeless shotgun powder.
- 123.65 Privately owned military aircraft on temporary sojourn abroad.

**SPECIAL EMERGENCY PROVISIONS**

- 123.70 Temporary suspension or modification of the regulations of this part.

**AUTHORITY:** §§ 123.01-123.70, issued under sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934, sec. 103, E.O. 10575, 19 F.R. 7251, 3 CFR, 1954 Supp.

**§ 123.01 Application for license.**

Persons who intend to export from or import into the United States any of the articles enumerated in the United States Munitions List shall make application to the Department of State on form DSP-5 in the case of exports and DSP-38 in the case of imports. Application for intransit license shall be made on form DSP-61. Application for license to export technical data shall also be made on form DSP-5 (See Part 125).

**§ 123.02 Export license.**

Articles on the United States Munitions List may not be exported until a license has been issued, or unless covered by an exemption provision of this subchapter. Prior to the issuance of an export license, the Department of State may also require documentary informa-

tion pertinent to the proposed transaction. Licenses are applicable only to articles within the territorial jurisdiction of the United States (See also § 123.10).

**§ 123.03 Import license.**

(a) Articles on the United States Munitions List may not be imported until a license has been issued, or unless covered by an exemption provision of this subchapter. Prior to the issuance of an import license, the Department of State may also require documentary information pertinent to the proposed transaction.

(b) No military firearms or ammunition of United States manufacture may be imported for sale in the United States if such articles were furnished to foreign governments under a United States foreign assistance program. This prohibition is applicable to military firearms and ammunition furnished on a grant basis to, or for which payment in full has not been made by, a foreign government under the Lend-Lease Act of 1941, as amended; the Greek-Turkish Aid Act of 1947, as amended, the China Aid Act of 1948, as amended; the Mutual Defense Assistance Act of 1949, as amended; the Mutual Security Act of 1951, as amended; and the Mutual Security Act of 1954, as amended.

(c) The above restriction covers firearms which are advanced in value or improved in condition in a foreign country, but it does not include those which have been so substantially transformed as to become, in effect, articles of foreign manufacture (See § 121.02).

(d) A person desiring to import military firearms and ammunition which were manufactured in the United States must certify that the importation of such firearms or ammunition is not prohibited by the provision of paragraph (b) of this section, and that none of the firearms or ammunition being imported was furnished on a grant basis to, or was acquired without full payment by, a foreign government under a foreign assistance program of the United States as set forth in § 123.03(b) of Title 22, Code of Federal Regulations. The certification statement must be accompanied by documentary information on the original foreign source of the material.

**NOTE:** For the purpose of this section, the term "military firearms and ammunition" includes all firearms and ammunition furnished under the foreign assistance programs of the United States as set forth in paragraph (b) of this section. The term payment in full as used in paragraph (b) of this section, means the payment of a price established by the United States Government as the full value of the property.

**§ 123.04 Intransit license.**

An intransit license must be obtained prior to the entry of the material into the United States for transshipment to a third country (See also § 123.60).

**§ 123.05 Validity and terms of licenses.**

(a) Licenses are valid for six months from their issuance date unless a different period of validity is stated thereon. They are not transferable.

(b) No extensions may be granted on licenses which have expired or are about to expire. If shipment cannot be completed during the period of validity of the license, another application may be submitted for license to cover the unshipped balance.

**§ 123.06 License denial, revocation or suspension.**

(a) Licenses may be denied, revoked, suspended or revised by the Department of State without prior notice whenever the Department deems such action to be advisable in furtherance of,

- (1) World peace;
- (2) The security of the United States; or
- (3) The foreign policy of the United States.

(b) Whenever after appropriate consideration a license application is denied, or an outstanding license is revoked, suspended, or revised, the applicant or licensee shall be advised promptly in writing of the Department's decision, and the reasons therefor as specifically as security and foreign relations considerations permit.

(c) Upon written request made within 30 days after receipt of an adverse decision, the applicant or licensee shall be accorded a full review of his case by the Department.

(d) Unused, expired, suspended or revoked licenses must be returned immediately to the Department of State.

**§ 123.07 Amendments and alterations.**

No amendment or alteration of a license may be made except by the Department of State, or by collectors of customs or postmasters when specifically authorized to do so by the Department of State.

**§ 123.08 Ports of exit or entry.**

Applications for license should show the proposed port or ports of exit or entry in the United States. If, subsequent to the issuance of a license, shipping arrangements necessitate a change in port, the Department of State must be notified by letter of the change in port.

**§ 123.09 Licenses filed with collectors of customs.**

Prior to exportation or importation, licenses shall be filed with the collector of customs at the port through which the shipment is being made except for exports by mail (see § 123.10). Shippers' export declaration (United States Department of Commerce form 7 25-V) must also be filed with and authenticated by the collector before the commodities are exported.

**§ 123.10 Shipment by mail.**

(a) Export licenses for United States Munitions List articles, except technical data (see §§ 125.40 and 125.41), which are being transported by mail shall be filed with the postmaster at the post office where the articles are mailed. The postmaster shall endorse each license to reflect shipments made. The license must be returned to the Department of State upon expiration or completion of shipment (see § 123.09).

(b) Licenses covering imports by mail shall be filed with the collectors of customs at the port of entry.

**§ 123.11 Foreign trade zones.**

A Foreign Trade Zone of the United States is considered an integral part of the United States for the purpose of this subchapter, and a license is required for shipments of United States Munitions List articles to and from such Foreign Trade Zones.

**§ 123.12 Export to warehouses or distribution points.**

Applications for license to export United States Munitions List articles to warehouses or distribution points for subsequent resale will be considered by the Department. Licenses issued for such applications will normally contain conditions for special distribution controls and reporting.

**§ 123.13 Export of vessels of war.**

(a) The transfer of a vessel of war as defined by § 121.12 of this subchapter from United States to foreign registry is considered an exportation for which an approval or license from the Department of State is required. If the vessel to be exported is physically located in the United States, an export license must be obtained. If the vessel is located abroad, the Department's written approval in the form of a letter must be obtained prior to its transfer of registry.

(b) The registration under a foreign flag of an undocumented vessel of war located in the United States is considered an exportation for which a license is required from the Department of State.

**§ 123.14 Repairs or alterations of vessels.**

Persons affecting repairs or alterations on foreign vessels of war as defined in § 121.12, in the United States shall obtain an export license for articles enumerated in the United States Munitions List which are required in connection with such repairs or alterations.

**COUNTRY OF DESTINATION**

**§ 123.21 Country of ultimate destination.**

(a) The country designated on an application for export license as the country of ultimate destination must be the country wherein the articles being exported are to be used.

(b) The prior written approval of the Department of State must be obtained before United States Munitions List articles previously exported from this country under license may be re-sold, diverted, transferred, transshipped, re-shipped or re-exported to, or used in any country other than that described on the export license as the country of ultimate destination.

(c) The following statement shall be entered on the shipper's export declaration, the bill of lading and the invoice whenever United States Munitions List articles are to be exported:

These commodities are licensed by the United States Government for export to \_\_\_\_\_ Diversion (Country of ultimate destination) contrary to United States law prohibited.

The American exporter and forwarding agent shall have the responsibility of entering such a statement.

**§ 123.22 Shipments to or from certain countries.**

The exemptions provided by this part do not apply to shipments destined for or originating in the Soviet Union, Soviet bloc countries, Communist China, north Korea, and any of the territories of Viet-Nam which are under de facto control of the Communists, or any other area that may come under Communist control.

**§ 123.23 Canadian shipments.**

Collectors of customs may release shipments of unclassified arms, ammunition, and implements of war to or from Canada without a license with the following exceptions:

(a) Intransit shipments through the United States to or from Canada or intransit shipments through Canada to or from the United States.

(b) Hellum gas.

(c) Arms, ammunition, and implements of war which were imported into Canada from a third country and have been in Canada less than one year.

(d) No military firearms or ammunition of United States manufacture, as covered by § 123.03(b), may be imported for sale in the United States.

**§ 123.24 Territories, possessions, other areas under United States sovereignty and the Canal Zone.**

Export and import licensing controls do not apply to shipments between the continental United States, United States territories, possessions, other areas under the sovereignty of the United States, and the Canal Zone. Licenses are required, however, for exports from such areas to foreign countries.

**§ 123.25 Domestic aircraft shipments via foreign ports.**

A written statement must be filed by the pilot with the collector of customs at the port of exit for airborne shipments of arms, ammunition, and implements of war being transported from a port in the United States to another United States port via a foreign country other than Canada. The original of the statement should be filed with the collector at the port of exit and a duplicate thereof filed with the collector at the port of re-entry, for endorsement by him and transmission to the collector at the port of exit.

**Statement**

Domestic Shipments via Foreign Ports of Articles on United States Munitions List

The undersigned certifies that the articles listed below are being shipped from -----

via ----- (U.S. port of exit)

----- (Foreign port)

and that the final destination is ----- (United States port of entry)

Amount Description of article Value

-----

-----

Signed -----

Endorsement: Customs Inspector

Port of Exit ..... Date .....  
Endorsement: Customs Inspector  
Port of Entry ..... Date .....

**SHIPMENTS BY THE UNITED STATES  
GOVERNMENT**

**§ 123.40 Shipment by or to the United States Government.**

The exportation or importation of arms, ammunition, and implements of war by the United States Government is not subject to the provisions of section 414 of the Mutual Security Act, as amended. A license to import and export such articles is not required, therefore, when all aspects of the transaction are handled by a United States Government agency. A license is required, however, when a private individual or firm or forwarding agent is involved in any aspect of the transaction.

**EXEMPTIONS FOR ARMS AND AMMUNITION SHIPMENTS**

**§ 123.51 Obsolete small arms.**

Subject to the provisions of § 123.03, collectors of customs are authorized to permit the importation or exportation without a license of small arms covered by Category I of the United States Munitions List, which were manufactured prior to 1898, on presentation of satisfactory evidence of age.

**§ 123.52 Arms carried on person or in baggage.**

(a) Subject to the provisions of § 123.22, collectors of customs are authorized to permit not more than three non-automatic rifles, carbines, revolvers, or pistols and not more than one thousand cartridges therefor, to enter the United States or depart therefrom without a license when these firearms are on the person of an individual or with his baggage or effects, whether accompanied or unaccompanied, and are intended exclusively for his personal use for sporting or scientific purposes or for personal protection and not for resale.

(b) Subject to the provisions of § 123.22, collectors of customs are authorized to permit the exportation without a license of ammunition for firearms, provided the quantity does not exceed one thousand rounds in any shipment and the ammunition is for the personal use of the consignee and not for resale. A license is required, however, for exportation to Bahrain, Kuwait, Qatar, the Trucial States, and Muscat and Oman.

(c) Subject to the provisions of § 123.22, collectors of customs are authorized to permit the importation without a license of one non-automatic firearm for the personal use of the ultimate consignee and not for resale.

**§ 123.53 Arms for the use of members of the armed forces.**

(a) Collectors of customs are authorized to permit members of the United States Armed Forces or United States civilian personnel employed by those forces, presenting written authorization from their commanding officers, to ship or bring into the United States without license, war trophies and souvenirs consisting of firearms and ammunition therefor.

(b) Collectors of customs are authorized to permit rifles, carbines, revolvers, pistols, and parts of such weapons to leave the United States without a license, provided they are consigned to servicemen's clubs overseas or to individual members of the Armed Forces of the United States, and are accompanied by a written authorization from the commanding officer.

**§ 123.54 Sample shipments.**

Collectors of Customs are authorized to permit up to an inclusive total of three rifles, carbines (excluding automatic and semi-automatic models), revolvers and pistols to be exported or imported without a license, providing the articles being shipped are not for sale and will be returned to the same exporter or importer. Collectors of customs may also permit the exportation and importation of such sample weapons without a license when they are being returned to their owner.

**MISCELLANEOUS EXEMPTIONS**

**§ 123.60 Border shipments.**

Shipments originating in Canada or Mexico which incidentally transit the United States en route to a delivery point in the country of origin are exempt from the requirement of an intransit license.

**§ 123.61 Certain helium gas exports.**

Subject to the provisions of § 123.22, collectors of customs are authorized to permit the export without a license of miniature cylinders containing helium gas in fractional cubic foot quantities mixed with other gases, provided that the gas is intended for medical use and shipment does not exceed ten cubic feet of "contained helium" to any consignee.

**§ 123.62 Scuba equipment.**

Collectors of customs are authorized to permit the exportation or importation without a license of not more than three units of Scuba and other self-contained diving and swimming apparatus, intended exclusively for personal use.

**§ 123.63 Propellants and explosives.**

Subject to the provisions of § 123.22 of the Department's regulations, collectors of customs are authorized to permit the exportation without a license of propellants, except solid and liquid propellant compositions, and explosives for nonexplosive uses such as medical uses and laboratory tests. Such shipments must be clearly marked as to content, include no materials classified from a military security point of view, and weigh no more than 25 pounds.

**§ 123.64 Smokeless shotgun powder.**

Collectors of customs are authorized to permit the importation of smokeless shotgun powder without a license (See Category V of the United States Munitions List).

**§ 123.65 Privately owned military aircraft on temporary sojourn abroad.**

(a) A certificate of temporary sojourn may be issued by the Department in appropriate instances in lieu of an export license to authorize the departure of privately owned military aircraft from the United States for a temporary

sojourn abroad not to exceed three months' duration. The Department may require documentary evidence pertinent to the aircraft or proposed sojourn before issuance of a certificate of temporary sojourn. The provisions of § 126.02 are also applicable to certificates of temporary sojourn.

(b) Private owners of military aircraft to be flown or shipped from the United States under the provisions of paragraph (a) of this section shall complete and submit a request for a certificate of temporary sojourn, Form DSP-73, in triplicate to the Department for its approval.

(c) An original and duplicate copy of the certificate of temporary sojourn issued by the Department must be presented to the collector of customs at the port of departure. The certificate is for endorsement by the collector provided he finds no discrepancy in the statements made therein. The endorsed certificate shall be returned to the pilot and carried on the aircraft as evidence that the required permission has been granted and the duplicate retained by the collector for his records pending the completion of the temporary sojourn. The pilot or operator is required to depart from the United States at an airport where a customs officer is available for outward endorsement on the certificate. The outward clearance cannot be obtained by telephone or other informal means.

(d) Upon completion of the temporary sojourn, the certification shall be surrendered to the collector of customs at the port of entry. If the ports of entry and departure differ, the customs officer is to forward the surrendered certificate properly endorsed to the customs authorities at the original port of departure. The completed certificate must be returned to the Department.

(e) The Department may permit a privately-owned military aircraft to make a series of flights to and from the United States under a certificate of temporary sojourn not to exceed three months' duration. Full details of the proposed flights must be given.

(f) The dates of actual departure and entry shall be noted on the reverse side of the certificate and endorsed by appropriate customs officials. No action is to be taken on the copy of the certificate which is returned to the original port of exit until the pilot's copy of the certificate is taken up by the customs officer upon his last entry into the United States prior to the expiration of the authorized period.

(g) Requests for extension of temporary sojourn must be made to the Department in writing, stating the original port of departure.

**SPECIAL EMERGENCY PROVISIONS**

**§ 123.70 Temporary suspension or modification of the regulations of this part.**

The Director, Office of Munitions Control, Department of State, is authorized to order the temporary suspension or modification of any or all of the regulations of this part in the interest of

furthering the objectives of world peace and the security and foreign policy of the United States.

## PART 124—LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

- Sec.  
124.01 Manufacturing license agreements.  
124.02 Technical assistance agreements.  
124.03 Exportation of technical data in furtherance of an agreement.  
124.04 Required provisions in agreements.

AUTHORITY: §§ 124.01-124.04, issued under sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934, sec. 103, E.O. 10575, 19 F.R. 7251, 3 CFR, 1954 Supp.

### § 124.01 Manufacturing license agreements.

Agreements between persons or companies residing in the United States and foreign persons or entities, private or governmental, for the manufacture abroad of arms, ammunition, and implements of war are required to be submitted to the Department of State before the effective date of the agreement for review from the standpoint of United States foreign policy and military security.

### § 124.02 Technical Assistance Agreements.

Agreements entered into between persons or companies residing in the United States and foreign persons or entities, private or governmental, for the furnishing of technical assistance and technical information relating to articles designated as arms, ammunition, and implements of war are required to be submitted to the Department of State before the effective date of the agreement for review from the standpoint of United States foreign policy and military security.

### § 124.03 Exportation of technical data in furtherance of an agreement.

Collectors of Customs or postal authorities may permit the exportation without a license of unclassified technical data being exported in furtherance of a manufacturing license or technical assistance agreement covering United States Munitions List items concerning which the Department of State has, in writing, expressed no objection, unless the data contain a major advance in design, process or manufacturing technique over the United States Munitions List items covered in the original agreement. In such event, the data must be reviewed by cognizant representatives of the United States Government. The United States principal to the agreement will be responsible for submitting to the Department of State unclassified technical data of this type for review.

### § 124.04 Required provisions in agreements.

(a) Manufacturing license or technical assistance agreements should define in precise terms the following:

- (1) The equipment and technology involved;
- (2) The scope of the information to be furnished;

(3) The period of duration of the agreement;

(4) Statement of ownership of equipment and special tools involved which would be made available in connection with the agreement. In lieu of inclusion as an integral part of the agreement, the applicant may submit this information in the form of an attachment or enclosure to the agreement submitted for review.

(b) (1) It is the policy of the United States Government not to pay or allow to be paid in connection with purchases made with Mutual Security Program funds, a charge for patent rights in which it holds a royalty-free license, or for technical data which it has a right to use and disclose to others for purposes of the Mutual Security Program, or which are in the public domain, or with respect to which it has been placed in possession without restriction upon their use and disclosure to others. Reasonable charges for reproduction, handling, mailing, and other similar administrative costs do not fall within this policy.

(2) Pursuant to the above policy (subparagraph (1) of this paragraph) agreements shall be written in such a way as to provide that (i) purchases of items by or for the United States Government, or with funds derived through the Mutual Security Program, will not include a charge (a) for technical data in the possession of the United States Government, or in which the United States Government has a right to possession, and regarding which there is no prohibition against use by the United States Government and disclosure to others and (b) for royalties or amortization for patents or inventions in which the United States Government holds a royalty-free license; and (ii) the license rights transferred by such agreements will be subject to existing rights of the United States Government.

(c) (1) It is further the general policy of the United States Government not to approve agreements envisaging the transmittal abroad of classified United States military information unless certain security arrangements are in existence on a government-to-government basis under which the United States Government can be assured that its classified information will be properly protected abroad. Release of such information requires the prior approval of the cognizant United States military department under established authorities. It is also necessary to invoke an existing government-to-government agreement or to establish an agreement which will bind the licensee's government to assume responsibility for the adequate protection of classified United States information.

(2) In accordance with subparagraph (1) of this paragraph, any proposed agreement envisaging the transmission of classified United States military information abroad shall be submitted to the Department of State for review and coordination with appropriate military authorities prior to the consummation of negotiations with the foreign government or firm.

(d) No liability shall be incurred by or attributed to the United States Government by reason of this review requirement in connection with any possible future infringements of privately-owned patent or proprietary rights, either domestic or foreign. The applicant shall acknowledge this provision of the regulations either by its inclusion in the agreement or by letter over the signature of an officer of the company.

## PART 125—TECHNICAL INFORMATION

### DEFINITIONS AND INTERPRETATIONS

- Sec.  
125.01 Technical data.  
125.02 Classified information.

### TRANSMISSION OF INFORMATION

- 125.11 Transmission of unclassified technical information.  
125.12 Transmission of classified information.

### EXPORT CONTROL REQUIREMENTS

- 125.20 Requirements.

### TECHNICAL DATA EXEMPTIONS

- 125.30 General exemptions.  
125.31 Importation of technical data.  
125.32 Canadian shipments.

### MAILING AND SHIPPING PROCEDURES

- 125.40 Certification requirements.  
125.41 Clearance of exports.  
125.42 Sino-Soviet bloc destinations.

AUTHORITY: §§ 125.01 to 125.42, issued under sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934, sec. 103, E.O. 10575, 19 F.R. 7251, 3 CFR, 1954 Supp.

### DEFINITIONS AND INTERPRETATIONS

#### § 125.01 Technical data.

The term "technical data" as used in Category XVII of the United States Munitions List means any professional, scientific, or technical information relating to arms, ammunition, and implements of war, including but not limited to, any model, design, photographic negative, document or any other thing containing a plan, specification or descriptive information of any kind (see also § 125.20).

#### § 125.02 Classified information.

Classified military information, including classified technical data, is covered by Category XVI of the United States Munitions List and refers to any material or information which has been assigned a military security classification, by any agency of the Department of Defense. Military information is information under the control and jurisdiction of the Department of Defense, its departments and agencies, or of primary interest to them.

### TRANSMISSION OF INFORMATION

#### § 125.11 Transmission of unclassified technical information.

The export controls established under the provisions of Section 414 of the Mutual Security Act of 1954, as amended, relating to technical data cover the exportation of technical information on articles designated as arms, ammunition, and implements of war in the

**United States Munitions List**, regardless of whether the transmission of such information is accomplished by oral, visual or documentary means. This includes but is not limited to transmission by mail, by hand, through foreign visits by American technical personnel, release to foreign nationals in the United States, or through participation in symposia.

**§ 125.12 Transmission of classified information.**

Classified military information, including classified technical data, Category XVI, United States Munitions List, may only be transferred or exported on a government-to-government basis or under other special procedures established by the cognizant military agency.

**EXPORT CONTROL REQUIREMENTS**

**§ 125.20 Requirements.**

(a) A license issued by the Department of State is required for the exportation of unclassified technical data, Category XVII of the United States Munitions List, unless the exportation falls within the exemption provisions of these regulations (see § 125.30). The application for license must be submitted on the prescribed form (form DSP-5) with accompanying technical data documentation to be furnished in triplicate.

(b) A license issued by the Department of State is required for the exportation of unclassified technical data relating to arms, ammunition, and implements of war which is included in any application for a foreign patent. This licensing requirement is in addition to the license for foreign filing which must be obtained by an exporter from the Patent Office during the first six months of the pendency of a patent application. After six months, only a Department of State license is required. If the thereto should be addressed to the Patent Office.

(c) Communication with the Department of State is required in the event that classified military information will be involved in a proposed exportation. A letter must be submitted to the Department containing full details of the proposed transaction, accompanied by documentation in triplicate to assist in the consideration of the proposal.

**§ 125.21 Government agency shipments.**

An export license is not required when the shipment is made by the United States Government or an agency thereof unless a private individual or firm is involved in the shipping or mailing procedure.

**TECHNICAL DATA EXEMPTIONS**

**§ 125.30 General exemptions.**

(See § 125.40.)

Collectors of Customs or Postal Authorities may permit the exportation without a license to any destination other than those listed in § 125.42 of unclassified technical data as follows:

- (a) If they are in published form and subject to public dissemination by being:
- (1) Sold at newsstands and bookstores;
  - (2) Available by subscription of pur-

chase to any individual without restriction;

(3) Granted second class mailing privileges by the United States Government; or

(b) If they are technical data related to United States Munitions List items which have been reviewed and approved for public release by an authorized agency of the Department of Defense.

(c) When the technical data are being exported in furtherance of a manufacturing license or technical assistance agreement as set forth in § 124.03.

(d) When the technical data are being exported in furtherance of a contract with an agency of the United States Government or a contract between an agency of the United States Government and a foreign manufacturer or other foreign entity, provided the contract specifically calls for transmission of relevant technical data.

(e) When the technical data relate to firearms not in excess of caliber .50 and ammunition for such weapons except unclassified technical data containing advanced designs, processes and manufacturing techniques.

(f) When the technical data relate to sales bulletins, operational maintenance manuals, and sales promotion manuals covering equipment, the exportation of which has been authorized.

(g) When the technical data consist of additional copies of sales bulletins, operational, maintenance, sales promotional manuals previously approved for export to these destinations.

**§ 125.31 Importation of technical data.**

A license is not required for the importation of technical data.

**§ 125.32 Canadian shipments.**

Collectors of Customs or postal authorities may permit unclassified technical data to be exported to Canada without the presentation of a license.

**MAILING AND SHIPPING PROCEDURES**

**§ 125.40 Certification requirements.**

If the exporter wishes to claim the benefit of an exemption from the requirement of an individual license in accordance with the provisions of § 125.30, he is required to certify that the proposed exportation is covered by one of the provisions of that section. He may so certify by marking the package or letter "22 CFR 125.30 ----- applicable", identifying the specific subsection or subsections under which the exemption is claimed.

**§ 125.41 Clearance of exports.**

Licenses covering technical data exports must be presented to the appropriate collector of customs or postal authority when shipment is made.

**§ 125.42 Sino-Soviet bloc destinations.**

The exemptions provided in this part do not apply to the following destinations: the Soviet Union, Soviet bloc countries, Communist China, North Korea, any of the territories of Viet-Nam which are under de facto control of the

Communists, or any other area that may come under Communist control.

**PART 126—VIOLATIONS AND PENALTIES**

Sec.	
126.01	Violations in general.
126.02	Misrepresentation and concealment of facts.
126.03	Penalties for violations.
126.04	Authority of collectors of customs.
126.05	Seizure and forfeiture.

**AUTHORITY:** §§ 126.01-126.05, issued under sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934, sec. 103, E.O. 10575, 19 F.R. 7252, 3 CFR, 1954 Supp.

**§ 126.01 Violations in general.**

It shall be unlawful for any person to export or attempt to export from the United States any of those articles designated by the United States Munitions List as arms, ammunition, and implements of war or to import or attempt to import such articles into the United States without first having obtained a license therefor unless a written approval was obtained from the Department of State or an exemption from this requirement is authorized by this subchapter.

**§ 126.02 Misrepresentation and concealment of facts.**

(a) It shall be unlawful under these regulations willfully to use for the purpose of exportation or importation of U.S. Munitions List articles any export or import control document which makes a false statement or misrepresents or conceals material facts. Any such false statement, representation or concealment in such a document so used for such purpose shall be considered as made in a matter within the jurisdiction of an Agency of the United States in violation of section 1001 of title 18, United States Code and Section 414 of the Mutual Security Act (22 U.S.C. 1934).

(b) For the purpose of this section, the term export or import control document shall include the following when used for the purpose of exportation of United States Munitions List articles:

- (1) Applications for import, export, or intransit license to the Department of State and supporting documents.
- (2) Shipper's export declarations.
- (3) Invoices.
- (4) Declaration of destinations.
- (5) Delivery verification.
- (6) Request for certificate of temporary sojourn.

**§ 126.03 Penalties for violations.**

Any person who willfully violates any provision of Section 414 of the Mutual Security Act of 1954, 22 U.S.C. 1934, as amended, or any rule or regulation issued under that section or who willfully, in a registration, license application, or written request makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$25,000

or imprisoned not more than two years or both.

#### § 126.04 Authority of Collectors of Customs.

(a) Collectors of Customs are authorized to take appropriate action to insure observance of this subchapter as to the importation, or attempt to import, or to the exportation, or attempt to export, arms, ammunition, and implements of war, including technical data relating thereto, whether or not authorized by the licenses or written approval issued under this subchapter, including but not limited to inspection and loading or unloading of carriers.

(b) When a license or written approval is presented to a Collector of Customs authorizing the exportation or importation, of arms, ammunition, and implements of war, together with such other documents as may be required by customs regulations, the collector may require the production of other documents and information relating to the proposed exportation or importation, including invoices, orders, packing lists, shipping documents, correspondence, instructions, and other relevant information and documents.

#### § 126.05 Seizure and forfeiture.

Whenever an attempt is made to import, or bring into the United States, or to export, or ship from or take out of the United States, any arms, ammunition, and implements of war, including technical data relating thereto, in violation of law, the several Collectors of Customs or officials of such other United States agencies as may be authorized to perform law enforcement functions may seize and detain any such arms, ammunition, and implements of war, including technical data relating thereto, and the vessel, vehicle or aircraft containing the same, and retain possession thereof until released or disposed of as directed by law.

### PART 127—FOREIGN MILITARY AIRCRAFT FLIGHTS

Sec.

- 127.01 Foreign military flight clearances.
- 127.02 Use of military installations.
- 127.03 Required information.
- 127.04 Reciprocal arrangements.

**AUTHORITY:** §§ 127.01-127.04, issued under sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934; sec. 103, E.O. 10575, 19 F.R. 7251, 3 CFR, 1954 Supp.; U.S.C. 1008(a).

#### § 127.01 Foreign military flight clearances.

Foreign military aircraft desiring to overfly or land on United States territory are required to obtain written authorization to do so in advance from the Department of State. Such a request normally is made by the appropriate foreign government embassy in Washington in the form of a diplomatic note. The request must reach the Department of State no later than 72 hours before the overflight is to take place.

#### § 127.02 Use of military installations.

Requests by foreign governments for authorization to land their military aircraft at United States military installations must have the approval of the defense agency owning or leasing the military installations in addition to the required authorization of the Secretary of State for overflight of United States territory (see § 127.01). Requests for authorization to visit a military installation should be made to the defense agency concerned as far in advance as possible and no later than 72 hours before the arrival date. It should contain information outlined in § 127.03.

#### § 127.03 Required information.

In regard to the information required in connection with §§ 127.01 and 127.02, foreign governments requesting permission for military aircraft to overfly and land should support the request with the following information:

- (a) The purpose of the flight;
- (b) The type and identity of the aircraft;
- (c) Names and nationality of crew;
- (d) Names and nationality of passengers;
- (e) Dates of arrival and departure at each point;
- (f) Special services and facilities desired.

#### § 127.04 Reciprocal arrangements.

Reciprocal arrangements have been entered into with certain countries concerning military flights. Such arrangements have the effect of modifying or eliminating the necessity of obtaining prior clearances under the conditions set forth in the agreements.

### PART 128—ADMINISTRATIVE PROCEDURES

Sec.

- 128.01 Exclusion of functions under section 414 of Mutual Security Act of 1954, as amended.
- 128.02 Exclusion of functions under section 1108(a) of Federal Aviation Act.

**AUTHORITY:** §§ 128.01, 128.02, issued under sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934, sec. 103, E.O. 10575, 19 F.R. 7251, 3 CFR, 1954 Supp.

#### § 128.01 Exclusion of functions under section 414 of Mutual Security Act of 1954, as amended.

The functions conferred by section 414 of the Mutual Security Act of 1954, as amended, are excluded from the operation of the Administrative Procedures Act (60 Stat. 237), as contemplated by sections 1003 and 1004 thereof.

#### § 128.02 Exclusion of functions under section 1108(a) of the Federal Aviation Act.

The functions conferred by section 1108(a) of the Federal Aviation Act are excluded from the operations of the Administrative Procedures Act as contemplated by sections 1003 and 1004 thereof.

The provisions of section 4 of the Administrative Procedure Act (60 Stat. 283; 5 U.S.C. 1003) relative to notice of proposed rule making are inapplicable to this order because the regulations contained therein involve foreign affairs functions of the United States.

These regulations shall take effect on March 1, 1960.

Dated: February 24, 1960.

For the Secretary of State.

JOHN W. HANES, Jr.,  
Administrator, Bureau of  
Security and Consular Affairs.

[F.R. Doc. 60-1890; Filed, Mar. 1, 1960; 8:49 a.m.]

## LEGISLATION

SECTION 414 OF THE MUTUAL SECURITY ACT OF 1954, AS  
AMENDED, TITLE 22, SECTION 1934, UNITED STATES CODESection

## 414 MUNITIONS CONTROL

- (a) The President is authorized to control, in furtherance of world peace and the security and foreign policy of the United States, the export and import of arms, ammunition, and implements of war, including technical data relating thereto, other than by a United States Government agency. The President is authorized to designate those articles which shall be considered as arms, ammunition, and implements of war, including technical data relating thereto, for the purposes of this section.
- (b) As prescribed in regulations issued under this section, every person who engages in the business of manufacturing, exporting, or importing any arms, ammunition, or implements of war, including technical data relating thereto, designated by the President under subsection (a) shall register with the United States Government agency charged with the administration of this section, and, in addition, shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this Act or any other foreign assistance program of the United States, whether or not advanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.
- (c) Any person who willfully violates any provision of this section or any rule or regulation issued under this section, or who willfully, in a registration or license application, makes any untrue statement of a material fact or omits to state a material fact required to be

Section

414            stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$25,000 or imprisoned not more than two years, or both.

tab C

EXECUTIVE ORDER NO. 10973

ADMINISTRATION OF FOREIGN ASSISTANCE  
AND RELATED FUNCTIONS

By virtue of the authority vested in me by the Foreign Assistance Act of 1961 (75 Stat. 424) and Section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

\*\*\*\*\*

Sec. 105. Munitions control.

In carrying out the functions conferred upon the President by Section 414 of the Mutual Security Act of 1954, the Secretary shall consult with appropriate agencies. Designations, including changes in designations, by the Secretary of articles which shall be considered as arms, ammunition, and implements of war, including technical data relating thereto, under that section shall have the concurrence of the Secretary of Defense.

\*\*\*\*\*

JOHN F. KENNEDY

THE WHITE HOUSE,  
November 3, 1961.

Department of State  
Washington, D. C.

July 1, 1963

DELEGATION OF AUTHORITY NO. 104-3

SUBJECT: Transfer of Munitions Control Functions

Delegation of Authority No. 104 of November 3, 1961 (Public Notice 199) as amended, is hereby further amended as follows:

By substituting in section 6(b)(3) the words "To the Deputy Assistant Secretary for Politico-Military Affairs, Office of the Deputy Under Secretary of State for Political Affairs" for the words "to the Director, Office of Munitions Control".

Dated: July 1, 1963

/s/ GEORGE W. BALL  
Acting Secretary of State

This Delegation of Authority was published in the Federal Register as Public Notice No. 218, <sup>25</sup>F.R. 7231 on July 13, 1963.

Department of State  
Washington, D. C.

July 1, 1963

REDELEGATION OF AUTHORITY NO. 104-3-A

SUBJECT: Redefinition of Authority With Respect to Munitions Control  
Functions.

By virtue of the authority vested in the Secretary of State and pursuant to the provision of Delegation of Authority No. 104 of November 3, 1961, 26 F.R. 10608, as amended by Delegation of Authority No. 104-A of September 26, 1962, 27 F.R. 9925, and by Delegation of Authority No. 104-3 of July 1, 1963, relating inter alia to those munitions control functions conferred upon the President by Section 414 of the Mutual Security Act of 1954, authority is hereby redelegated to the Director, Office of Munitions Control to exercise the authority vested in the President by Section 414 of the Mutual Security Act of 1954. This redelegation of authority shall not be construed as divesting the Deputy Assistant Secretary for Politico-Military Affairs of any of the powers, duties, and functions conferred upon him by Delegation of Authority No. 104-3.

Dated: July 1, 1963

/s/ JEFFERY C. KITCHEN  
Deputy Assistant Secretary for  
Politico-Military Affairs

This Delegation of Authority was published in the Federal Register as Public Notice No. 219, 28 F.R. 7231 on July 13, 1963.

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Annex 3

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Annex III

EXPORT CONTROL PROVISIONS OF THE ATOMIC ENERGY ACT

270

The Atomic Energy Act prescribes control over atomic weapons or parts thereof; any parts of atomic weapons systems or any other items or information revealing Restricted Data; any activity, classified or unclassified, which would constitute directly or indirectly engaging in the production of special nuclear material outside the United States; source, by-product and special nuclear materials; utilization and production facilities; and any other item or technical data to be exported subject to the terms of an atomic energy Agreement for Cooperation with another nation. The Statutory definitions of certain terms are important to the basic regulatory structure:

Source material means uranium, thorium, or any other material which is determined by the Commission to be source material or ores containing one or more of the foregoing materials in such concentration as the Commission may by regulation from time to time determine. (No materials other than uranium and thorium have been determined to be source materials.)

By-product material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

Special nuclear material means plutonium, uranium enriched in the isotope U-233 or in the isotope U-235, or any other material which the Commission determines to be special nuclear material, but does not include source

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material; or any material artificially enriched by any of the foregoing, but does not include source material. (The Commission has not determined that any materials other than U-233, U-235 and all isotopes of plutonium are special nuclear material.)

Production facility means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.<sup>1</sup>

Utilization facility means (1) any equipment or device except an atomic weapon determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.<sup>1</sup>

- 
1. The Commission has not determined any important components pursuant to this authority. Control of components is exercised by the Department of Commerce under the Export Control Act except for control of components of military utilization facilities exercised by the Office of Munitions Control.

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Restricted Data means all data concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy but not including data declassified or removed from the Restricted Data category. Data may be removed from the Restricted Data category as the Commission shall from time to time determine can be published "without/undue risk to the common defense and security."

Control Provisions Concerning Special Nuclear Material and Production and Utilization Facilities

The Commission may distribute special nuclear material abroad only pursuant to the terms of an Agreement for Cooperation; the Commission may license the export of production and utilization facilities only pursuant to the terms of an Agreement for Cooperation; and Restricted Data may be communicated abroad only pursuant to an Agreement for Cooperation.

Source and by-product material may be distributed abroad either pursuant to an Agreement for Cooperation or in the absence of an Agreement for Cooperation, whenever the Commission determines that such exports will not be inimical to the interests of the United States. The Commission has made a number of determinations constituting general authorizations in this area (10 CFR 30 and 10 CFR 40).

The Atomic Energy Act also prohibits any person from directly or indirectly engaging in the production of any special nuclear material outside the United States except (1) under an Agreement for Cooperation, or (2) upon authorization by the Commission after a determination that such an activity "will not be inimical to the interests of the United States."

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This prohibition is very broad and may extend to such activities as furnishing unclassified information. The Commission has, however, issued regulations (10 CFR 110) authorizing a number of activities.

#### Civil Agreements for Cooperation

The Atomic Energy Act requires that Agreements for Cooperation for civil purposes contain among other things (a) a guaranty by the cooperating party, that security safeguards and standards as set forth in the Agreement will be maintained,<sup>1</sup> (b) a guaranty by the cooperating party that any material "will not be used for atomic weapons, or for research on or development of atomic weapons or for any other military purpose," and (c) a guaranty that any material or Restricted Data made available under the Agreement will not be transferred to unauthorized persons or beyond the jurisdiction of the cooperating party except as the Agreement may provide. All Civil Agreements for Cooperation must be approved by the President who is required to authorize their execution and determine in writing that performance of the Agreement "will promote and will not constitute an unreasonable risk to the common defense and security." Thereafter, Civil Agreements for Cooperation must lie before the Joint Committee on Atomic Energy for thirty days while the Congress is in session before they may be brought into effect. The Committee may waive this thirty-day waiting period.

- 
1. This provision has provided the basis in those Agreements, both civil and military, where communication of Restricted Data has been authorized for classified security annexes setting forth the basic security standards to be employed by the cooperating party for the protection of information communicated under the Agreement.

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Military Agreements for Cooperation

The Atomic Energy Act establishes even more stringent requirements for cooperation in the military applications of atomic energy with foreign countries. The Statute contains a flat prohibition against the export of any atomic weapon. It prohibits also the export of any (a) source material, (b) by-product material, (c) special nuclear material, (d) utilization facility, (e) non-nuclear parts of atomic weapons, (f) non-nuclear parts of atomic weapons systems containing Restricted Data, or (g) Restricted Data to a foreign country except pursuant to the terms of an Agreement for Cooperation.

Agreements for Cooperation for Mutual Defense Purposes, unlike Civil Agreements for Cooperation may contain only conditional commitments by the United States. The Statute requires that the cooperating party continue to participate with the United States in "an international arrangement" for mutual defense by making substantial and material contributions thereto. It also requires that the President approve the program of cooperation contemplated under the Agreement, that he make a determination in writing that the performance of the Agreement will promote and will not constitute an unreasonable risk to the common defense and security and that the Agreement lie before Congress for sixty days while Congress is in session and may become effective only if the Congress does not by concurrent resolution during that period state in substance that it does not favor the

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proposed Agreement. This waiting period may only be waived by an act of Congress.

Once the Agreement becomes effective, however, the Statute requires with respect to each proposed transfer of material or equipment or each proposed communication of Restricted Data that the President determine that the transfer or communication "will promote and will not constitute an unreasonable risk to the common defense and security." The President has delegated the authority to make this determination to the Atomic Energy Commission and the Secretary of Defense acting jointly in accordance with Executive Order 10841.

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Annex 4

NATIONAL SECURITY COUNCIL

*Spurg*

CONFIDENTIAL

December 17, 1964

MEMORANDUM FOR MR. BUNDY

28

Mac --

Spurg and I think this is a good idea and could be acted on immediately. It is one of the few constructive moves that State has proposed recently in this area. Although the obligations we have undertaken by signing the treaty are not specifically directed toward France, there is an inevitable and natural relationship between the test ban treaty and NSAM 294. Therefore, Spurg and I suggest that you put this matter on your agenda for your meeting next week with Rusk and McNamara with the thought that you might get a quick agreement on the desirability of issuing the new Federal regulation.

Charles E. Johnson

*CEJ*

*I think we might  
add this to our  
meeting  
this day  
my 15*

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DECLASSIFIED  
E.O. 13292, Sec. 3.4  
NSC Memo, 1/30/95, State Guidelines  
By jc, NARA, Date 7-18-05

DEC 7 1964

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CONTRACT OF SALE OF PLUTONIUM  
BETWEEN  
THE UNITED STATES ATOMIC ENERGY COMMISSION  
ACTING ON BEHALF OF THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND THE  
SUPPLY AGENCY OF THE EUROPEAN ATOMIC ENERGY COMMUNITY  
ACTING ON BEHALF OF THE  
EUROPEAN ATOMIC ENERGY COMMUNITY

The United States Atomic Energy Commission, acting on behalf of the Government of the United States of America, (hereinafter referred to as the "Seller"), and the Supply Agency of the European Atomic Energy Community, acting on behalf of the European Atomic Energy Community, (hereinafter referred to as the "Purchaser"), with respect to the sale of plutonium pursuant to the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community Concerning Peaceful Uses of Atomic Energy, signed on June 11, 1960, as amended, (hereinafter referred to as the "Additional Agreement for Cooperation"), and, on the part of the Seller, pursuant to the Atomic Energy Act of 1954, as amended, and the Euratom Cooperation Act of 1958, as amended, hereby agree as follows:

ARTICLE I - DEFINITIONS

The following terms, as used herein, shall have the following meanings:

- a. The terms "Atomic Energy Commission", "Commission" or "AEC" mean the United States Atomic Energy Commission or any duly authorized representative thereof.
- b. The term "base charge" means the United States dollar amount per unit of plutonium in standard form and specification in effect as of the time any particular transaction under this Contract takes place (i) as set forth in schedules published by the Commission in the United States Federal Register from time to time, or (ii) in the absence of such published schedules, as determined in accordance with the Commission's pricing policies.
- c. The term "Commission facility" means a laboratory, plant, office or other establishment operated by or on behalf of the Commission.
- d. The term "Community" means the European Atomic Energy Community.
- e. The term "established Commission pricing policy" means any applicable price or charge in effect at the time any particular transaction under this Contract takes place (i) published by the Commission in the United States Federal Register, or (ii) in the absence of such a published figure, determined in accordance with the Commission's pricing policies in which event a statement of such pricing policies will be furnished the Purchaser. The Commission's published prices and charges as well as its pricing policies, may be amended from time to time.

- f. The term "persons acting on behalf of the Commission (or Seller)" includes employees and contractors of the Commission, and employees of such contractors, who implement or participate in the implementing of this Contract pursuant to their employment or their contracts with the Commission.
- g. The term "value" means the United States dollar amount determined by multiplying the applicable Commission base charge by the number of units, or fractions thereof, of plutonium involved, whether or not such material is in standard form and specification.
- h. The term "specification material" means plutonium to be delivered hereunder which conforms with the applicable statement of characteristics set forth in Appendix "A" which is hereby made part of this Contract or with such other material characteristics as the Parties may agree.
- i. The term "standard form" means the standard chemical form of plutonium as published by the Commission in the Federal Register from time to time.

ARTICLE II - SCOPE: COMMITMENTS TO SELL AND TO PURCHASE

A. During the period of this Contract the Seller shall sell to the Purchaser and the Purchaser shall purchase from the Seller for use in connection with the Community fast reactor applications hereinafter identified, it being understood that such use must be within the scope of the fast reactor information exchange arrangement agreed to by the Parties in a letter from the AEC to the Community dated May 27, 1964 and a response of the same date:

- (1) Twenty-two (22) kilograms of total plutonium containing nominally 3.85 percent of the plutonium isotope Pu-240 for use in connection with the fast reactor project SNEAK by the Gesellschaft für Kernforschung m.b.h., Karlsruhe, within the framework of the Association Contract between the Community and Gesellschaft dated May 2, 1963. The said material to be delivered pursuant to Article III in accordance with the deliveries schedule specified in Appendix C which is hereby made a part of this Contract;
- (2) Three hundred sixty-five (365) kilograms of total plutonium containing nominally 7.7 percent of the plutonium isotope Pu-240 for use in the fast reactor project Masurca by the C.E.A. and in connection with the fast reactor project SNEAK by the Gesellschaft für Kernforschung m.b.h., Karlsruhe, within the framework of the Association Contracts between the Community and C.E.A. dated June 27, 1962, and between the Community and the Gesellschaft dated May 2, 1963. The said material to be delivered pursuant to Article III in accordance with the deliveries schedule specified in Appendix C of this Contract.

- (3) Twenty-two and one-half (22.5) kilograms of total plutonium containing nominally 7.7 percent of the plutonium isotope Pu-240, to be delivered pursuant to Article III in accordance with the deliveries schedule specified in Appendix C of this Contract. This plutonium will be converted into oxide pellets at the Euratom Transuranium Institute at Karlsruhe, Germany for irradiation and burnout tests in the ER-2 (Belgium), FR-2 (Germany), FRJ-2 (Germany) and Enrico Fermi (U. S.) reactors under the association arrangement between the Community and the Gesellschaft für Kernforschung on fast neutron reactors; and
  - (4) such other amounts of plutonium, within the maximum quantity limitation specified in subparagraph D. (1), *infra*, for uses within the scope of the aforementioned fast reactor exchange arrangement between the Parties as the Parties may agree in writing.
- B. A part, not to exceed five (5) kilograms, of the material to be sold pursuant to subparagraph A. (2), *supra*, may by agreement of the Parties be supplied with a specified Pu-240 content of other than 7.7 percent.
- C. (1) The plutonium delivered pursuant to this Contract shall be specification material.
- (2) Plutonium supplied hereunder shall be in metal or dioxide form in quantities as specified in Appendix A of this Contract. Charges for conversion from standard form to metal or dioxide shall be paid by the Purchaser in accordance with Article IV, *infra*.

- D. (1) The maximum quantity of material sold pursuant to this Contract shall not exceed four-hundred twenty-five (425) kilograms of total plutonium.
- (2) In connection with the maximum quantity of material to be sold hereunder as set forth in Article II, D. (1) it is estimated that approximately thirty-seven (37) kg. of total plutonium, hereinafter referred to as scrap, will not be used in the aforementioned Community fast reactor applications but will be needed in the fabrication of fuel elements for these applications.

ARTICLE II. Bis - DISPOSITION OF SCRAP AND SUBSEQUENT USES OF PLUTONIUM

- A. Upon completion of fabrication of the material supplied pursuant to this contract into fuel elements, the Purchaser, unless the Parties otherwise agree, shall return to the Commission, f.o.b. a U. S. facility designated by the Commission, any material remaining as excess to these fabrication operations up to the amount provided for as scrap under Article II D. (1) a. supra. Unless otherwise agreed, such returned material shall be in the standard form and meet the specifications as published in the Federal Register required at the time of return.
- B. When any material sold pursuant to Article II A., which has not been returned to the Commission in accordance with paragraph A. of this Article, is not used by the Purchaser as provided in Article II A., it may be used by the Community in other projects agreed to by the Parties which fall within the category of applications for which the transfer of enriched uranium or plutonium to the Community is authorized under the provisions of the Additional Agreement for Cooperation between the United States of America and the European Atomic Energy Community signed on June 11, 1960, as the Agreement has been or may be amended. The Commission shall have the right to repurchase pursuant to provisions of Article IV E, any material sold under this Contract when it is not being used for the use specified in Article II or for any subsequent use to which the Parties have agreed pursuant to this paragraph. The Community, upon the request of the Commission in the exercise of such right, shall promptly transfer and recall the material to the Commission accordingly. Unless otherwise agreed, such

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repurchased material shall be in the standard form and meet the specifications required at the time of return as published in the Federal Register.

ARTICLE III - DELIVERIES

- A. Plutonium to be sold hereunder which has been determined in accordance with this Contract to be specification material shall, consistent with the schedule of deliveries specified in Appendix C, be made available by the Seller, F.O.B. commercial conveyance at a facility of the Seller, to a transporter arranged for by the Purchaser pursuant to paragraph B, infra.
- B. Consistent with said schedule of deliveries, the Purchaser shall arrange for a transporter who, after written notice by the Purchaser to the Seller and subject to such terms and conditions as the Commission may prescribe, shall transport and deliver the specification material to a port of export in the United States of America to be designated by the Purchaser with the approval of the Seller. The Seller shall thereupon promptly perform those actions required to effect the delivery and authorize the export of such material to the Purchaser at such designated port. All costs of transportation and delivery (including costs of containers and packaging) and of storing such material, as well as all arrangements for physically handling such material in connection with such delivery and transport, shall be borne by the Purchaser and not the Seller. After such material has been made available to the Purchaser's transporter and until acceptance of delivery thereof by the Purchaser, as provided below, the Purchaser shall hold the Seller harmless from any and all liability (including third party liability) for any cause whatsoever arising out of or resulting from the transport of such material to the designated

port and be responsible to the Seller for loss of or damage to such material and for such charges (determined in accordance with established Commission pricing policy) as the Seller may require with respect to such material. The Purchaser or its duly authorized agent shall promptly accept delivery of such material at the designated port of export and, upon acceptance of said delivery (to be evidenced by an appropriate written receipt), the Purchaser shall assume full and complete responsibility for the plutonium. Nothing in this paragraph shall deprive the Purchaser or any other person of any rights under Section 170 of the U.S. Atomic Energy Act of 1954, as amended. Title to such plutonium shall vest in the Purchaser at the time it leaves the jurisdiction of the United States of America.

- C. The Seller will make all reasonable efforts to deliver the material which is the subject of sale hereunder at the times specified or agreed upon in accordance with Article II A., supra, but neither the Government of the United States, the Seller, nor persons acting on behalf of the Seller, shall be subject to any liability for any failure so to make available.
- D. Neither Party shall be liable for any failure to perform under Articles II or III of this Contract which failure to perform is caused by any Act of God, strike, fire or public enemy.

ARTICLE IV - CHARGES AND PAYMENTS

- A. The charges for material sold pursuant to Article II A. (1), supra, shall be \$43.00 per gram of the contained plutonium isotopes Pu-241 plus Pu-239, plus \$0.01 for each hundredth of a percent (0.01%) by which the Pu-239 plus Pu-241 content of the material delivered is greater than 92.2 weight percent.
- B. The charge for material sold pursuant to Article II A. (2), supra, shall be equal to its value at the time it is made available at a facility of the Seller to the transporter arranged for by the Purchaser as provided in Article III A. As of the effective date of this Contract, the base charge for such material in standard form having a nominal Pu-240 content of 7.7 percent is \$43.00 per gram of the contained plutonium isotopes Pu-241 plus Pu-239.
- C. In addition to the charges stated in paragraphs A. and B., supra, charges for handling and packaging and for any special service (including conversion) rendered at the request of the Purchaser shall be made in accordance with established Commission pricing policy in effect at the time such services are rendered. As of the effective date of this Contract, charges for conversion of plutonium from standard form to metal and to oxide are \$1.50 and 0.65 respectively, per gram of total plutonium delivered, plus a charge for loss of material during conversion equal to one percent (1%) of the material delivered, times the applicable base charge for such material.

- D. Within sixty (60) days after the date of any invoice of the Seller therefor (such invoice to be dispatched at or subsequent to the time of the Purchaser's acceptance of delivery of plutonium, as provided in Article III B), the Purchaser shall compensate the Seller for the value of the plutonium covered by such invoice and for the costs of conversion, packaging and any other special service rendered by the Seller on behalf of the Purchaser, which are specified in such invoice. Payment shall be made in United States currency and shall be paid to the Seller or its designated agent or contractor. Failure to receive payment within sixty (60) days after date of invoice shall entitle the Seller to an additional charge at six (6) percent per annum on such amount.
- E. (1) Payment for scrap repurchased by the Seller pursuant to Article II Bis A shall be in the form of a credit against any subsequent deliveries of special nuclear material by the Seller to the Purchaser under this contract or any other contract between the Parties for the sale of special nuclear material by the Seller to the Purchaser. The amount of such credit per gram of plutonium repurchased shall be the same as the Commission's sale price per gram for comparable plutonium in effect at the time of delivery of the scrap to the Commission or as the charge made for such plutonium, on a first-in-first-out basis, per gram for plutonium of the same isotopic composition, as set forth

- in paragraphs A and B, of this Article, whichever may be lower.
- (2) Payment for plutonium repurchased by the Seller pursuant to Article II Bis B shall be, at the election of the Purchaser, in the form of either a cash payment or a credit against subsequent deliveries of special nuclear material to the Purchaser under this contract or any other contract between the Parties for the sale of special nuclear material by the Seller to the Purchaser. The amount of such payment or credit per gram of plutonium repurchased shall be the same as the charge made for such plutonium, on a first-in-first-out basis, per gram for plutonium of the same isotopic composition, as set forth in paragraphs A and B, of this Article.

ARTICLE V - DISCLAIMER

The application or use of any material or containers sold by the Seller to the Purchaser pursuant to this Contract shall be the responsibility of the Purchaser and the Seller does not warrant the suitability of such material for any particular use or application.

ARTICLE VI - DETERMINATION OF MATERIAL QUANTITIES AND PROPERTIES:  
SETTLEMENT OF MEASUREMENT DIFFERENCES

- A. The following provisions and procedures shall apply to the determination of the quantities and properties of the material to be sold hereunder and the resolution of any measurement differences which may result from such determination.
- (1) The Seller shall notify the Purchaser at least thirty (30) days in advance of the weighing and sampling of any material to be sold hereunder, and the Purchaser's authorized representative, who shall be acceptable to the Seller, shall be afforded an opportunity to witness the weighing of such material and the taking of any such samples. Procedures for weighing and sampling and for the distribution of samples obtained, are set forth in Appendix B which is hereby made part of this Contract. Each Party will give advance notice to the other of their respective methods of analysis of the samples. Any necessary verification of the accuracy of such methods shall be made utilizing the plutonium standards of the National Bureau of Standards, Washington, D. C.
  - (2) Within a period of forty-five (45) days after the distribution of any samples, each Party will advise the other by registered air mail of their respective opinions as to whether the plutonium from which the samples were taken is specification material. Unless otherwise mutually agreed, failure of either Party to so advise the other within said

period shall make the finding of the other Party final and binding for purposes of determining whether such plutonium is specification material, and in the event neither Party so advises the other within said period the Seller's determination shall be final and binding for such purposes.

- (3) If such plutonium is found by both Parties to be specification material, said findings shall be final and binding for purposes of determining whether such plutonium is specification material.
- (4) If either the Seller or the Purchaser advises the other of its opinion that the said material is not specification material, the Seller shall provide replacement specification material unless the Parties otherwise mutually agree; provided, however, that either Party may dispute the finding of the other by prompt written notification, and, unless otherwise resolved, said dispute shall be referred to an umpire mutually agreed to by both Parties, whose decision shall be final and binding for purposes of determining whether the material is specification material. The Purchaser will bear the umpire's charges and any charges associated with the umpire sample if the umpire's result shows the material to be specification material, and the Seller will bear said charges if the result shows the material to be non-specification material. The Parties shall, prior to the first delivery of material hereunder,

select a mutually agreeable umpire for purposes of resolving measurement differences under this Contract.

- (5) For purposes of ascertaining the value of the material to be sold hereunder, the Seller, in addition to determining whether the material to be delivered is specification material, shall ascertain by weight percent the total plutonium content of the samples and by weight percent the Pu-239 plus Pu-241 content of the said total plutonium content. Within a period of thirty (30) days after distribution of any samples, the Seller shall advise the Purchaser by registered air mail of its determination of the said plutonium contents. Within 30 days after receipt of the Seller's determination, the Purchaser may advise the Seller of the Purchaser's determination by weight percent of the total plutonium content of the samples and by weight percent the Pu-239 plus Pu-241 content of the said total plutonium content. Failure of the Purchaser to so advise the Seller shall make the Seller's determination final and binding for purposes of payment under this Contract. The Seller's determination of total plutonium content shall govern for purposes of payment under this Contract if the Purchaser's analysis is within  $\pm 0.15\%$  from the Seller's determination. Any greater variation between the determinations which is not otherwise resolved by mutual agreement shall be referred to the agreed upon umpire, whose decision shall be final and binding. If the umpire's result is within  $\pm 0.15\%$  from the

the Seller's determination, the Purchaser will assume the umpire's charges plus any charges associated with the umpire sample. If the umpire's result is not within  $\pm 0.15\%$  from the Seller's determination, the Party whose result is further from the umpire's result will assume the umpire's charges plus any charges associated with the umpire sample; provided, however, in the event the umpire's result is equidistant between the Seller's and Purchaser's results, the Parties will each bear one-half of the umpire's charges.

- (6) The determination of total plutonium content, impurities and isotopic content of the material to be sold hereunder shall be made in accordance with the procedures set forth in Appendix B.

ARTICLE VII - ARBITRATION

Except as otherwise specifically provided in this Contract, all disputes concerning questions of fact which may arise under this Contract, and which are not disposed of by mutual agreement, shall be referred to arbitration by a board composed of three competent arbitrators. One of such arbitrators shall be appointed by the Seller, one shall be appointed by the Purchaser, and the third arbitrator shall be selected by the first two. In the event that the first two arbitrators so selected are unable to agree upon a third arbitrator, then the Chairman of the United States Atomic Energy Commission and the President of the Commission of the European Atomic Energy Community shall mutually agree upon and designate the person to act as the third arbitrator. The arbitration proceedings shall be in accordance with the rules established by the American Arbitration Association for Commercial Arbitration. The decision of a majority of the arbitrators on the arbitration board shall be final and binding. Allocation of the costs of arbitration shall be as determined by the board of arbitrators; provided, however, that neither Party shall be obliged to pay the costs of the other Party's arbitrator. The Provisions of this Article shall not be applicable to the cases specified in this Contract where action to be taken is to be in accordance with the mutual agreement of the Parties nor shall they be applicable to the resolution of measurement differences arising from the determination, pursuant to Article VI, supra, of the quantities and properties of material sold hereunder.

ARTICLE VIII - CONTAINERS

The Seller will supply on a sale basis a maximum number of \_\_\_\_\_ ( )  
M-102 (LLD-1) fissile material containers as needed by the Purchaser  
for use in the shipment to Community facilities of the plutonium to  
be sold hereunder. Upon Purchaser's request, such containers will be  
made available by the Seller, F.O.I. Richland, Washington, at a  
price of \_\_\_\_\_ ( ).

ARTICLE IX - ASSIGNMENTS

The Purchaser may not assign this Contract or any rights or interests hereunder, without the express written consent of the Seller and then only in accordance with the provisions of the Additional Agreement for Cooperation and any amendments or revisions thereto.

ARTICLE X - AGREEMENT FOR COOPERATION

The sale which is the subject of this Contract shall be in all respects subject to and in accordance with all of the terms, conditions, and provisions of the Additional Agreement for Cooperation and any amendments or revisions thereto. In the event of incompatibility between this Contract and the Additional Agreement, the latter shall govern.

ARTICLE XI - OFFICIALS NOT TO BENEFIT

No Member of or Resident Commissioner to the Congress of the United States of America, shall be admitted to or share any part of this Contract or any benefit that may arise therefrom.

ARTICLE XII - APPLICABLE LAW

This Contract shall be construed according to the laws applicable in the Federal Courts of the United States of America for contracts in the United States of America to which the Government of the United States of America is a party.

ARTICLE XIV - CHANGE IN BASE CHARGE

- A. (1) The base charge for material sold pursuant to Article II A. (2), supra, is subject to change by the Seller from time to time in accordance with the United States Atomic Energy Act of 1954, as amended.
- (2) Any change in said base charge shall be effective on either July 1 or January 1 as stated in a notice of change published by the Seller, provided at least thirty (30) days prior notice is given the Purchaser by publication or otherwise, and provided further, that the Seller may reduce the base charge at any time by a notice of change published by the Seller and without said prior notice.
- B. (1) In the event the said base charge is increased during the term of this Contract to more than \$43.00 per gram of the contained plutonium isotopes Pu-241 plus Pu-239, the Purchaser shall have, during a period of thirty (30) days beginning with the effective date of said increased charge, the right to terminate in whole or in part by written notice to the Seller the remainder of its obligation under Article II A. (2), supra, to the extent said obligation would require the purchase of material thereunder at the increased base charge. This right of termination shall be forfeited if not exercised by the Purchaser within said thirty (30) day period.
- (2) Termination pursuant to subparagraph B. (1), supra, shall relieve the Seller, after the effective date of termination, of any obligation under Article II A. (2), supra, to

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supply that portion of the plutonium covered by such termination.

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ARTICLE XV - NOTICES

A. Except as may otherwise be agreed, any notices required by this Contract of the Purchaser shall be submitted in writing to the Seller addressed to:

Senior AEC Representative,  
United States Mission to the  
European Communities,  
23, avenue des Arts,  
Brussels 4, Belgium.

B. Except as may otherwise be agreed, any notices required by this Contract of the Seller shall be submitted in writing to the Purchaser addressed to:

Director General,  
Euratom Supply Agency,  
51, rue Belliard,  
Brussels 4, Belgium

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Contract, the present text of which shall be the only authentic version.

DONE at \_\_\_\_\_, in quadruplicate, this  
\_\_\_\_\_ day of \_\_\_\_\_, 196\_\_

FOR THE UNITED STATES ATOMIC ENERGY  
COMMISSION ACTING ON BEHALF OF THE  
GOVERNMENT OF THE UNITED STATES OF  
AMERICA:

\_\_\_\_\_  
Senior AEC Representative

FOR THE SUPPLY AGENCY OF THE  
EUROPEAN ATOMIC ENERGY COMMUNITY  
ACTING ON BEHALF OF THE  
EUROPEAN ATOMIC ENERGY COMMUNITY:

\_\_\_\_\_  
Director General  
Euratom Supply Agency

THE SECRETARY OF STATE  
WASHINGTON

December 1 1964.

~~SECRET~~

Dear Mac:

I have received a copy of Glenn Seaborg's letter to you of November 23, 1964, which invites my comment on two cases involving exports to France. While the cases both require evaluation within the terms of NSAM 294, I will comment on them separately because somewhat different considerations are involved in the two.

Let me first however state my understanding of the policy embodied in NSAM 294, as that policy bears on France. For the purposes before us, I can perhaps best do this by recalling that the policy has always had positive as well as negative aspects. In negative terms, it was the intent of the NSAM that we take pains to deny to France (1) whatever will significantly assist her in acquiring an independent strategic nuclear capability, whether that capability be thought of in terms of nuclear weapons or the means to deliver them, or (2) whatever will identify the U.S. as a major supplier or collaborator in the French effort. In positive terms, it was the intent of the NSAM that we take equally great pains not to deny to France things which would not so assist her, and that to the extent possible we continue to cooperate with France as with any other friend and ally. Finally, when NSAM 294 was issued

The Honorable  
McGeorge Bundy,  
Special Assistant to the President,  
The White House.

DECLASSIFIED  
E.O. 13292, Sec. 3.5  
NLJ 05-108  
By isl, NARA, Date 4-4-06

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last April, it was not for the purpose of setting new policy, but instead to clarify and re-affirm existent policy, with the aim of furnishing the concerned Departments and agencies with an authoritative expression of that policy to be used as a guide in their implementation of it.

There have been numerous developments since last April in U.S.-French relations and the world scene generally, not all of them favorable, unfortunately. I do not however see in them anything to change the basic evaluation given above, or to cause us on our own initiative to adopt a more restrictive policy toward France in terms of implementing NSAM 294.

As regards the pending French request for 63 kilograms of U-235, made under the 1959 Agreement for Cooperation for Mutual Defense Purposes, I have carefully considered the available evidence. I accept the AEC conclusion as to the marginal importance to the French program of the requested amount, and it seems quite clear that U.S. denial of the request would cause the French only minor technical inconvenience.

In political terms, on the other hand, the consequences of denial could be very serious. We do have an agreement, made in 1959 in good faith. We are already publicly associated with this particular program, by virtue of the agreement made in accordance with U.S. law and regulations, and by virtue of deliveries previously made under that agreement. To deny the pending request could and probably would be viewed by the French Government

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as reneging by the U.S. on a firm commitment, and in view of the determination that must necessarily be made in event of denial, as a deliberate U.S. intimation that France is no longer contributing to the common defense.

As is only too obvious, we have a sufficiency of serious problems with the French Government already. I do not believe it is in our basic interest to add to the list by denying this request, or by delaying further in deciding it. It has been pending since June, and to delay much longer would be tantamount to refusal, since the French must proceed within the next few weeks to take action of one kind or another. I therefore urge a quick affirmative decision.

As regards the computer cases, there is no comparable political aspect, of course, since no government-to-government agreement is involved, and the issue is largely that of deciding whether the inhibiting effect on the French program would be great enough to justify governmental intervention in U.S.-French trading relationships by blocking the two sales. This is not the sole issue, however, since an evaluation must be made also of the extent to which providing either or both these computers would identify the U.S. as a major supplier or collaborator in the French weapons program. The whole matter is a complex and difficult one, in which I would like to sort things out somewhat further before putting a recommendation of any kind to you.

Sincerely,



Dean Rusk

~~SECRET~~

NATIONAL SECURITY COUNCIL

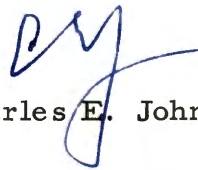
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November 27, 1964

MEMORANDUM FOR MR. BUNDY

Mac --

Spurg and I have both gone over the Seaborg letter on these two NSAM 294 matters and we agree in suggesting to you that USG approval be withheld in both cases for at least 60 days in the hope that our policy line will be clearer by early spring.



Charles E. Johnson

Communaute Europeenne  
de l'Energie Atomique  
(Euratom)

C O P Y

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La Commission

Luxembourg, June 18, 1958

His Excellency  
Ambassador W. Walton Butterworth,  
United States Representative to the  
European Atomic Energy Community,  
Luxembourg

Dear Mr. Ambassador,

As you are aware, in the course of the final negotiations on the text of the Memorandum of Understanding regarding the joint nuclear power program proposed between the European Atomic Energy Community (Euratom) and the United States of America, the question was raised as to the intent of the Parties regarding section 11D of the Memorandum. Section 11D provides for frequent consultation and exchange of visits between the Parties to give assurance to both Parties that the Euratom safeguards and control system effectively meets the responsibility and principles for the peaceful uses of atomic material stated in the Memorandum and that the standards of the materials accountability systems of the United States and Euratom are kept reasonably comparable.

I wish to confirm the understanding of the Euratom Commission that the consultations and exchanges of visits agreed upon in the referenced section and the assurance provided for therein include within those terms permission by each Party for the other Party to verify, by mutually approved scientific methods, the effectiveness of the safeguards and control systems applied to nuclear materials received from the other Party or to fissionable materials derived from these nuclear materials. In the Commission's judgment, this understanding is implicit in the text of the Memorandum of Understanding.

I wish further to confirm the Commission's understanding that with respect to Section 11E, in the event of the establishment of an international safeguards and control system by the International Atomic Energy Agency, the United States and Euratom will consult regarding assumption by that Agency of the safeguard and control over the fissionable material utilized or produced in implementation of the program contemplated by the Memorandum of Understanding.

Sincerely yours,

Max Kohnstamm  
Chief, Euratom delegation

In our forthcoming meetings with Euratom, including that to take place early next year, we intend to put forward a carefully worked-out proposal which will involve some U.S. access to facilities subject to the agreement, but which will clearly relate these visits and each activity to be undertaken during the course of such a visit to the application of "mutually approved scientific methods". For example, we will point out to Euratom that while the exchange of samples to compare analytical techniques is useful, it does not fully establish the effectiveness of the analytical procedure unless the method of sampling--which itself is a technical step in the application of safeguards--is subject to verification. We will thus request the right to observe and → participate in sampling operations. We will attempt, in putting forward this proposal, to clearly differentiate the activities of our safeguards personnel involved in this activity from the activities of inspectors operating under the general rules of inspection which provide for full access and the deliberate → use of the element of uncertainty and surprise in the activities of the inspector. We will not, for example, assert any right on the part of U.S. personnel participating in such visits to interrogate operating personnel, to engage in a survey of physical security measures and other activities normally associated with the investigative function of inspectors.

Finally, we will, of course, undertake these visits as an adjunct of and in company with inspections being performed by Euratom personnel. Precise details of our proposal are still in the formative stage. The intent behind them, however, is (a) to achieve a degree of direct U.S. access to facilities which, in itself, will have some statistical significance in acquiring accountability information on U.S. materials in Euratom and (b) will provide a significant increase in the completeness and dependability of our knowledge of the Euratom safeguards system, by giving us an opportunity to observe it in actual use. It is not intended to achieve, through this proposal, an independent U.S. control over materials of the degree which we would consider essential if we were, ourselves, the inspecting authority.

We believe that a carefully worked out proposal along the lines outlined above will have a significant chance of being accepted by Euratom. Obviously, we anticipate bargaining and we will present a proposal more extensive than that which we would expect to be ultimately accepted. We feel, however, that if we can differentiate clearly between the application of scientific methods performed on the site by U.S. personnel, on the one hand, and U.S. access to facilities and Euratom results on the other hand, progress can be made. We expect that our ability to make progress in this field will also be enhanced by application of the reciprocal aspects of the U.S.-Euratom arrangement; that is, by according the same rights to Euratom as we request for ourselves.

While no material has been returned from Euratom to the United States to date, such returns are not far off and we are considering offering to Euratom an opportunity in advance of any returns to visit United States facilities where such material will be received to carry out the same operations which we wish to carry out in Euratom facilities.