

Rec'd NCD 25 Jun 80/4

REQUEST FOR RECORDS DISPOSITION AUTHORITY
(See Instructions on reverse)

LEAVE BLANK
JOB NO NCI-151-80-5
DATE RECEIVED June 27, 1980
NOTIFICATION TO AGENCY
In accordance with the provisions of 44 U.S.C. 3303a the disposal request, including amendments, is approved except for items that may be stamped "disposal not approved" or "withdrawn" in column 10
10-6-80 <i>Robb's Way</i> Date Archivist of the United States

TO GENERAL SERVICES ADMINISTRATION,
NATIONAL ARCHIVES AND RECORDS SERVICE, WASHINGTON, DC 20408

1 FROM (AGENCY OR ESTABLISHMENT)
U.S. Department of Commerce

2 MAJOR SUBDIVISION
International Trade Administration

3 MINOR SUBDIVISION
Assistant Secretary for Trade Administration

4 NAME OF PERSON WITH WHOM TO CONFER
Charles J. Brett *CJM 6/17/80* 5 TEL EXT 377-3430

6 CERTIFICATE OF AGENCY REPRESENTATIVE

I hereby certify that I am authorized to act for this agency in matters pertaining to the disposal of the agency's records, that the records proposed for disposal in this Request of 6 page(s) are not now needed for the business of this agency or will not be needed after the retention periods specified

A Request for immediate disposal

B Request for disposal after a specified period of time or request for permanent retention

C DATE 6-18-80	D SIGNATURE OF AGENCY REPRESENTATIVE <i>Jerry V. Parr</i>	E TITLE Departmental Records Management Officer
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7 ITEM NO	8 DESCRIPTION OF ITEM (With Inclusive Dates or Retention Periods)	9 SAMPLE OR JOB NO	10 ACTION TAKEN
	<p>DEPUTY ASSISTANT SECRETARY for EXPORT ADMINISTRATION</p> <p>HEARING COMMISSIONER (Formerly called Compliance Commissioner)</p> <p>The Export Administration Act of 1979 (as did its predecessor Acts of 1949 and 1969) authorizes the President to prohibit or curtail the exportation from the United States or its territories any commodities or technical data under regulations which he may prescribe. The President delegated the authority to issue such regulations to the Secretary of Commerce; the Secretary in turn re delegated this authority to the Director, Office of Export Administration (hereinafter Director).</p> <p>The Hearing Commissioner (hereinafter Commissioner) is on the staff of the Deputy Assistant Secretary for Export Administration. His functions are quasi-judicial and relate to administrative sanctions, or the relief therefrom, imposed on domestic and foreign parties (individuals and firms)</p>		9 items

changes per M.G. of NARS and I.P. of D.O.C. 9-25-80 Closed out: 10-14-80: K.P.D. Copies sent to Agency, NCA, & NNF

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	<p>for violations of the Export Administration Regulations (hereinafter Regulations).</p> <p>The principal function of the Commissioner is to conduct administrative procedures on charges that are brought against parties for violations of the regulations and thereafter, based on the record, to impose sanctions, penalties, etc.</p> <p>The Administrative proceedings in compliance cases are initiated by a charging letter issued by the Director, Office of Export Administration (OEA). The charges are for violations of the Regulations and may involve the following: illegal exportation or reexportation of U.S.-origin commodities or technical data; false or misleading statements in connection with exportations or in the course of an official investigation; acting with knowledge of a violation; causing or aiding violations; soliciting violations or conspiring to commit violations.</p> <p>After a hearing, the Commissioner prepares an order or decision imposing sanctions, penalties, etc., or he may dismiss. If the Commissioner finds that there have been violations, he may issue an order which contains one or more of the following sanctions: denying export privileges, either temporarily or indefinitely; placing on probation; imposing a civil penalty up to \$10,000 for each violation. All orders are published in the Federal Register.</p> <p>An order denying export privileges may be for a specified period or for the duration of export controls. If the respondent is a domestic party, the order prohibits him from making exportations. If the respondent is a foreign party, the order prohibits him from receiving or dealing in U.S.-origin commodities or technical data. A probationary order does not deny export privileges, but provides that export privileges may be denied without a hearing if further violations are disclosed.</p> <p>There are two other types of orders relating to denial of export privileges which are issued by the Commissioner. These are (1) temporary denial orders, and (2) indefinite denial orders.</p>		

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	<p>A temporary denial order is comparable to a temporary restraining order that is issued in judicial proceedings. Where the Compliance Division has evidence that a party has violated the Regulations and is likely to continue to violate or where it has evidence that a violation is imminent, it may petition for a temporary denial order pending the issuance of a charging letter and further proceedings. The Commissioner considers the evidence and if he believes that a temporary denial order is warranted, he will issue an order which is published in the Federal Register.</p> <p>An indefinite denial order is issued against foreign parties for failure to answer interrogatories. Domestic parties and their records may be subpoenaed with regard to export control matters. Since such authority does not apply to parties in foreign countries, the Regulations provide that written interrogatories may be served on them. If they fail to answer within the specified time or fail to show good cause for such failure, they are subject to an order denying export privileges. A petition for such an order is presented to the Commissioner and he issues the requested order. It remains in effect until the interrogatories are answered or good cause is shown for failure to do so. Since there is no set termination date, it is designated as an "indefinite denial order", but will terminate in five years. Such orders are published in the Federal Register.</p> <p>Parties who are subject to any type of order may petition for termination or modification of the order. Such petitions are considered by and acted upon by the Commissioner. Where appropriate, a termination or modification order is published in the Federal Register.</p> <p>The Regulations provide that to prevent evasion of a denial order, its restrictions may be made applicable to other parties with whom the denied party is related by ownership, control, position of responsibility, etc. Petitions for related party actions are presented by the Compliance Division to the Commissioner. A notice of any related party determination is published in the Federal Register.</p>		

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	<p>Parties who are subject to denial or probation orders are listed in the <u>Table of Denial and Probation Orders Currently in Effect</u>. This is part of the Export Administration Regulations (Supp. No. 1 to Part 388) and is revised frequently as names are added or deleted.</p> <p>As in all matters involving legal applications, the Commissioner seeks to achieve consistency in applying legal principles. All facts being considered, he also seeks to impose consistent sanctions for similar violations.</p> <p>Precedents in previous cases are of utmost importance and are maintained in the Commissioner's office.</p> <p>A secondary function of the Commissioner is his position as Appeals Advisor to the Under Secretary for International Trade. This covers appeals from negative license considerations. The Appeals Advisor will assemble the record and review for advice to the Under Secretary for granting or denial of the appeal.</p> <p><u>Hearing Commissioner</u></p> <p>1. <u>Compliance Case Files</u>- are filed alphabetically, usually under the name of the principal respondent. The file in each case contains all appropriate documents relating to that case. This includes (as may be appropriate) charging letter, petitions, list of exhibits, Commissioner's Reports, copies of orders issued and as published in the Federal Register, press release, correspondence, motions, affidavits, and other pertinent documents. The exhibits in a particular case and the stenographic transcript of a hearing relating to a case are in a separate file which constitutes the "record" of the case. The "record" is associated with the case file. The case is closed when the name of the party is removed from the <u>Table of Denial and Probation Orders</u> currently in effect or when a foreign company has failed for two years to respond to interrogatories while under an indefinite denial order. The material in the files may be required for future action or in connection with other charges against the party.</p> <p>Retire closed cases annually to RSHF and transfer to WNRC 3 years later. Destroy 10 years thereafter. <i>when 13 years old.</i></p>		

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2.	<p><u>Appeals Case Files</u>- are created when a company seeks to reverse a negative export license application determination under Part 389 of the Export Administration Regulations. These files are maintained in sequential order from the date received and numbered accordingly. (Alphabetical cross-listings under the appellant's name are also maintained.)</p> <p>Among the documents included here are correspondence, affidavits, Forms ITA-687: <u>Notification of Rejection of Export License</u> and their predecessors, memoranda, formal request of appeal, final recommendation and supporting papers.</p> <p>Retire closed cases annually to RSHF and transfer to WNRC 3 years later. Destroy 10 years thereafter.</p>		
3.	<p><u>Index Cards</u>- Alphabetical listing on separate cards for each party involved in a compliance action. Where there is more than one respondent in a case, there is a cross-reference to the name under which the case is filed, usually the principal respondent.</p> <p>Destroy 13 years after case is closed.</p>		
4.	<p><u>Chronological File</u>- This consists of one copy of each outgoing item prepared for the Commissioner. These files are retained for a much longer period than other offices ordinarily keep them. There is justification for a longer retention period in this office since the files in a chronological arrangement are especially useful to the Commissioner as a source of precedents and as a worktool that shows the development of his legal opinions and judgements.</p> <p>Destroy when no longer needed for current business or when 5 years old, whichever is later.</p>		
5.	<p><u>Register of Cases</u>- This is a register maintained in a loose leaf binder showing the name of each respondent and the number assigned to his case. This register is significant because papers in other offices pertaining to export administration compliance cases are filed numerically by case number assigned and recorded here.</p> <p><i>Destroy when no longer needed for reference.</i> Permanent. Retire to RSHF when no longer needed for current business. Transfer to WNRC one year later. Offer to NARS when 20 years old.</p>		

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6.	<p><u>Chronological Copies of Federal Register-</u> extra copies from the Federal Register of all orders and other matters relating to compliance cases are maintained in loose leaf binders. This is the only complete chronological compilation of such documents in the Department. It is often used by various branches of OEA as well as by the Commissioner.</p> <p>Destroy when they have served their purpose or when 10 years old, whichever is sooner.</p>		
7.	<p><u>Summaries of Denial Orders Resulting From Charging Letters-</u> These are thumbnail summaries showing respondent's name and address, date of order, Federal Register citation, brief statement of violation, sanction imposed, and comments. These summaries are valuable in research and for precedent purposes.</p> <p><i>Destroy when 10 years old or when no longer needed for permanent. Retire to RSHF when no longer needed for current business. Transfer to WNRC one year later. Offer to NARS when 20 years old, for reference, whichever is sooner.</i></p>		
8.	<p><u>Copies of Orders Arranged by Years-</u> These are extra copies of orders submitted to the Federal Register for publication. As precedent material, it is convenient to have the orders arranged in this manner and this form.</p> <p>Destroy when they have served their purpose or when 10 years old, whichever is sooner.</p>		
9.	<p><u>Copies of Hearing Commissioner's Reports and Recommendations Arranged by Years-</u> These are reports and recommendations in contested cases. They often contain valuable background and precedent material, including historical background, foreign laws and procedure, and discussion of legal issues with citation of authorities. It is convenient to have this material arranged in this order and in this form.</p> <p><i>cut off closed cases annually and transfer to RSHF. Permanent. Retire to RSHF when no longer needed for current business. Transfer to WNRC one year later. Offer to NARS when 20 years old. if volume warrants, when 34 years old. Destroy when 13 years old.</i></p>		