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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

July 6, 2018
Ref: FOIA-2015-00292

SENT VIA EMAIL

This is in response to your Freedom of Information Act (FOIA) request for a copy of D-2003-069, "Interagency Review of Federal Export Enforcement Efforts." We received your request on January 15, 2015, and assigned it case number FOIA-2015-00292.

The Office of the Deputy Inspector General for Audit conducted a search and found the enclosed document, totaling 101 pages, responsive to your request. Upon coordination with the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), U.S. Customs and Border Protection, U.S. Department of Commerce Office of Inspector General, and U.S. Postal Service Office of Inspector General, we determined that certain redacted portions are exempt from release pursuant to:

- 5 U.S.C. § 552 (b)(3), which pertains to information exempted from release by statute, in this instance, Section 6 of the Central Intelligence Agency Act of 1949, as amended, and Section 102A(i)(1) of the National Security Act of 1947, as amended, per the CIA; and 50 U.S.C. § 3024(i)(1), per the FBI; and
- 5 U.S.C. § 552 (b)(7)(E), which pertains to records or information compiled for law enforcement purposes, the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions.

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July 6, 2018
Ref: FOIA-2015-00292

If you have any questions regarding this matter, please contact Searle Slutzkin at 703-604-9775 or via email at foiarequests@dodig.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Dorgan", with a long horizontal flourish extending to the right.

Mark Dorgan
Division Chief
FOIA, Privacy and Civil Liberties Office

Enclosure(s):
As stated

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Interagency Review of Federal Export Enforcement Efforts

VOLUME I

April 2003



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~~Improper disclosure of this report may result in criminal, civil, or administrative penalties.~~

April 18, 2003

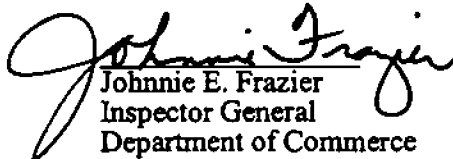
PREFACE


We are providing this interagency report for information and use. This review was conducted as a cooperative effort by the Offices of Inspector General of the Departments of Commerce, Defense, State, and the Treasury; the Central Intelligence Agency; and the U.S. Postal Service in response to Public Law 106-65, National Defense Authorization Act for FY 2000, section 1402. The law requires that the Offices of Inspector General provide an annual report to the Congress through 2007 on the transfer of militarily sensitive technologies to countries and entities of concern. Our report this year focuses on the Federal Government's export enforcement activities.

This report addresses issues that affect more than one agency and includes separate appendixes containing the agency-specific reports addressing the issues related to each agency. The report has three volumes. Volume I contains the interagency findings, followup on previous reports, and the agency-specific report the Department of Commerce issued. Volume II contains the agency-specific reports the Departments of Defense, State, the Treasury, and the U.S. Postal Service issued. Volume III contains the agency-specific report the Central Intelligence Agency issued and a classified memorandum the Department of Commerce issued.

Agency comments were not obtained for this interagency report due to time constraints. However, management comments on agency-specific draft reports were requested from the appropriate officials and were considered in the preparation of this report. When provided, management comments on individual agency reports were included in those reports.

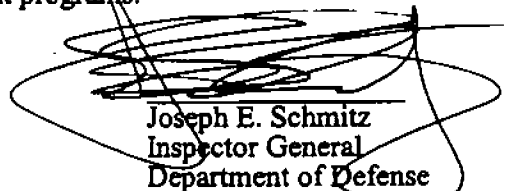
We hope this joint report will be useful to the Congress and the Administration in shaping the future of Federal export enforcement programs.

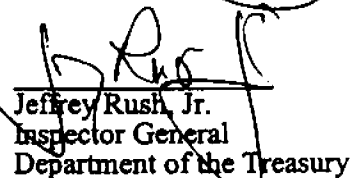

Johnnie E. Frazier
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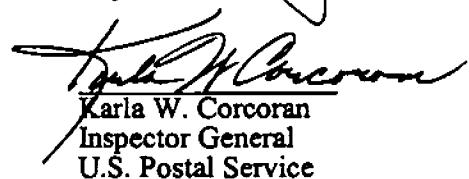

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U.S. Postal Service

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**Offices of Inspector General
Departments of Commerce, Defense, State, and the Treasury;
the Central Intelligence Agency; and the U.S. Postal Service**

Report No. D-2003-069

April 18, 2003

Interagency Review of Federal Export Enforcement Efforts

Executive Summary

Introduction

Public Law 106-65, National Defense Authorization Act for FY 2000, section 1402, requires the President to submit an annual report to Congress, each year through 2007, on the transfer of militarily sensitive technologies to countries and entities of concern. The National Defense Authorization Act further requires that the Inspectors General of the Departments of Commerce (Commerce), Defense (Defense), Energy, and State (State), in consultation with the Directors of Central Intelligence and the Federal Bureau of Investigation, conduct an annual review of policies and procedures of the U.S. Government with respect to their adequacy in preventing the export of sensitive technologies and technical information to countries and entities of concern. An amendment to section 1402(b), in section 1204 of the National Defense Authorization Act for FY 2001, further requires that the Inspectors General include in the annual report the status or disposition of recommendations set forth in previous annual reports under section 1402.¹ This year, to comply with the fourth-year requirement of the Act, the Offices of Inspector General (OIGs) conducted an interagency review of the Federal Government export enforcement activities to prevent the illegal transfer of militarily sensitive technologies to countries and entities of concern. Because the Department of the Treasury (Treasury), U.S. Customs Service (Customs), has a major role in the enforcement of export controls and coordinates its enforcement activities concerning outbound mail with the U.S. Postal Service, the OIGs for those agencies also participated in this year's review.

Background

The United States controls the export of certain goods and technologies for national security, foreign policy, antiterrorism, or nonproliferation reasons under the authority of several different laws. The primary legislative authority for controlling the export of goods and technologies that have both commercial and military applications is the Export

¹Energy does not play an active role in the enforcement of export controls. Therefore, Energy OIG did not participate in this Interagency review. However, Energy OIG provided the status of recommendations set forth in previous reports.

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Administration Act of 1979, as amended.² The export of Defense articles and services (munitions) is controlled under the authority of the Arms Export Control Act of 1976.

Export enforcement responsibilities are determined by the type of item exported and are assigned to several agencies. The dual-use export licensing process is managed and enforced primarily by Commerce and the munitions export licensing process is managed by State. Defense reviews export license applications and makes recommendations to Commerce and State. The Central Intelligence Agency provides relevant information to Commerce and State to assist them in the license and enforcement processes. Customs also enforces licensing requirements on all U.S. export shipments and coordinates its enforcement activities concerning outbound mail with the U.S. Postal Service.

Objectives

Our overall objective was to evaluate the adequacy and effectiveness of the Federal Government's activities to enforce export controls concerning the transfer of militarily sensitive technologies to countries and entities of concern. This includes its efforts to (1) prevent the illegal export of dual-use items and munitions, and (2) investigate and assist in the prosecution or administrative sanctioning of violators of the Export Administration Regulations and the International Traffic in Arms Regulations.

Review Results

License Conditions. Defense and Commerce OIGs found weaknesses in the processes to place and to follow up on reporting conditions³ on export licenses. Specifically, Defense OIG found that Defense did not establish policies and procedures to verify whether the export licenses Commerce's Bureau of Industry and Security and State's Directorate of Defense Trade Controls approved accurately reflected Defense-recommended conditions. Commerce OIG found that the Bureau of Industry and Security did not adequately monitor dual-use licenses with reporting conditions. The weaknesses identified occurred because Defense procedures did not require that the Defense Technology Security Administration verify the accuracy of conditions in approved export licenses, and the Bureau of Industry and Security lacked adequate resources to monitor licenses according to the schedules prescribed in its written procedures. Consequently, Defense cannot ensure that critical U.S. military technological advantages are preserved, and Commerce cannot be certain that exports were not diverted to unauthorized end users or that exporters who fail to comply with conditions are being denied subsequent licenses.

End-Use Monitoring. Commerce and State OIGs found that the dual-use and munitions end-use monitoring processes were valuable mechanisms for preventing misuse and diversion of controlled U.S. exports. In FY 2001, Commerce conducted 1,062 end-use checks and State conducted 410. However, the OIGs identified several weaknesses with respect to the end-use monitoring processes. Specifically, Commerce and State did not adequately coordinate end-use checks with other U.S. Government agencies at overseas

²Although the EAA expired on August 21, 2001, the President extended export regulations under Executive Order 13222, dated August 17, 2001, which invoked emergency authority under the International Emergency Economic Powers Act.

³A reporting condition requires the exporter to submit documentation to the Bureau of Industry and Security regarding the shipment.

missions. Commerce OIG found that end-use check training and performance feedback for Commerce's United States and Foreign Commercial Service officers who conduct end-use checks needed improvement; pre-license checks were sometimes untimely; and product information provided for pre-license checks was sometimes insufficient. In addition, Commerce OIG found that trip reports submitted by BIS' Safeguards Verification Program teams on the results of their end-use checks could be more timely, improved, and more widely disseminated; and unfavorable pre-license checks did not always result in license denials. State OIG found that the number of munitions end-use checks conducted was low; site visits were not performed at several U.S. overseas missions; feedback to coordinators was not provided on end-use check results; and unfavorable post-license checks did not always result in halting the shipment of munitions. Defense OIG found that the Defense Technology Security Administration did not have policies and procedures in place for determining whether an end-use check should be recommended as a condition for approval of the export license or to verify that Commerce and State performed Defense-recommended end-use checks. Problems with the end-use check processes have the potential to degrade the quality of the end-use checks performed and negatively impact the Nation's export enforcement efforts. Conversely, Defense OIG found that the Defense Technology Security Administration, Space Directorate established and executed an effective monitoring program for activities related to space launches.

Export Enforcement. Treasury and Commerce OIGs found numerous factors that impaired the U.S. Government's efforts to enforce export controls for dual-use items and munitions. Treasury and Commerce OIGs identified weaknesses in CBP: (b)(7)(E)

Commerce OIG identified weaknesses in the Bureau of Industry and Security's export enforcement process that impacted its ability to prevent and detect dual-use export control violations and help prosecute violators, although some of the weaknesses were partly dependent upon external factors. Those weaknesses were the result of insufficient Export Enforcement management oversight; inconsistent and untimely license determination processing; a nontransparent and untimely administrative remedy process; lack of followup on delinquent administrative penalty accounts; insufficient guidance and training for agents; and need for greater interagency coordination. As a result of weaknesses identified in the export enforcement process, both Treasury and Commerce OIGs reported that CBP: (b)(7)(E)

In addition, both Treasury and Commerce OIGs agreed that, CBP: (b)(7)(E)

Followup on Prior Interagency Reviews

Appendix B contains the status of the recommendations each agency has made in prior reports prepared pursuant to the amendment to section 1402 of the National Defense

⁴Decrementation involves CBP: (b)(7)(E)

Authorization Act for FY 2001, as amended. Appendix B also contains followup on the recommendations made in the 2002 interagency report.

Management Comments

The participating OIGs made specific recommendations relevant to their own agencies. Recommendations, management comments, and OIG responses are included in the separate reports each office issued, which are in Appendix C (Commerce), Appendix D (Defense), Appendix E (State), Appendix F (Treasury), Appendix G (U.S. Postal Service), and Appendix H (Central Intelligence Agency). Appendix C is in Volume I. Appendixes D, E, F, and G are in Volume II. Appendix H is in Volume III. Because of time constraints, agency managers were not asked to respond to this interagency report. Agency comments discussed in this report are those provided in response to the individual reports of the participating OIGs.

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Acronyms

AES	Automated Export System
BIS	Bureau of Industry and Security
CIA	Central Intelligence Agency
DDTC	Directorate of Defense Trade Controls
DTSA	Defense Technology Security Administration
EAA	Export Administration Act
EAR	Export Administration Regulations
FBI	Federal Bureau of Investigation
ITAR	International Traffic in Arms Regulations
OIG	Office of Inspector General
TPS	Technology Protection System
US&FCS	United States and Foreign Commercial Service
USML	U.S. Munitions List

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Introduction

In August 1998, the Chairman of the Senate Committee on Government Affairs requested that the Inspectors General from the Departments of Commerce (Commerce), Defense (Defense), Energy (Energy), State (State), the Treasury (Treasury), and the Central Intelligence Agency (CIA) conduct an interagency review of the export licensing processes for dual-use items and munitions. The objective of the review was to determine whether practices and procedures were consistent with national security and foreign policy objectives. An interagency report prepared by the Offices of Inspector General (OIGs), Report No. 99-187, "Interagency Review of the Export Licensing Processes for Dual-use Commodities and Munitions," was issued in June 1999.

Public Law 106-65, the National Defense Authorization Act for FY 2000, section 1402, "Annual Report on Transfers of Militarily Sensitive Technology to Countries and Entities of Concern," October 5, 1999, requires that the President submit an annual report to Congress, from year 2000 through year 2007, on the transfer of militarily sensitive technologies to countries and entities of concern. The National Defense Authorization Act further requires that the Inspectors General of Commerce, Defense, Energy, and State, in consultation with the Directors of Central Intelligence and the Federal Bureau of Investigation (FBI), conduct an annual review of policies and procedures of the U.S. Government with respect to their adequacy to prevent the illegal export of any sensitive technologies and technical information to countries and entities of concern. An amendment to section 1402(b), in section 1204 of the National Defense Authorization Act for FY 2001, further requires that the Inspectors General include in the annual report the status or disposition of recommendations that have been set forth in previous annual reports under section 1402.

To comply with the first-year requirement of the National Defense Authorization Act, the OIGs conducted agency-specific and interagency reviews of (1) Federal agency compliance with the deemed export licensing requirements contained in the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), and (2) U.S. Government efforts to protect against the illicit transfer of U.S. technology through select intelligence, counterintelligence, foreign investment reporting, and enforcement activities. In March 2000, two interagency reports, "Interagency Review of the Export Licensing Process for Foreign National Visitors" and "Interagency Inspectors General Assessment of Measures to Protect Against the Illicit Transfer of Sensitive Technology," were issued. To meet the second-year requirement of the Act, the OIGs conducted an interagency review to assess policies and procedures for developing, maintaining, and revising the Commerce Control List and the U.S. Munitions List (USML). The report, "Interagency Review of the Commerce Control List and the U.S. Munitions List," was issued in March 2001. For the third-year requirement of the Act, the OIGs conducted an interagency review of Federal automation programs that support the export licensing and enforcement process. The report, "Interagency Review of Federal Automated Export Licensing Systems," was issued in March 2002. This year, to comply with the fourth-year requirement of the Act, the OIGs conducted an interagency review of the U.S. Government

activities to help enforce export controls and prevent or detect the illegal transfer of militarily sensitive technologies to countries and entities of concern.¹

Treasury, U.S. Customs Service (Customs), has a major role in the enforcement of export controls and coordinates its enforcement activities concerning outbound mail with the U.S. Postal Service. Therefore, the Treasury and U.S. Postal Service OIGs also participated in this year's interagency review.

Background

The United States controls the export of certain goods and technologies for national security, foreign policy, antiterrorism, or nonproliferation reasons under the authority of several different laws. The primary legislative authority for controlling the export of goods and technologies that have both commercial and military applications (dual-use items) is the Export Administration Act (EAA) of 1979,² as amended (appendix 2401, United States Code, title 50). The export of Defense articles and services (munitions) is controlled under the authority of the Arms Export Control Act of 1976 (section 2751, United States Code, title 22). Export enforcement responsibilities are determined by the type of item exported and are assigned to several agencies.

Commerce. Under the EAA, Commerce's Bureau of Industry and Security (BIS)³ administers the EAR by developing export control policies, issuing and monitoring export licenses, and enforcing the laws and regulations on dual-use items for export. BIS has two principal operating units involved in export controls. The units are Export Administration and Export Enforcement. The Export Administration unit is responsible for processing export licenses applications and determinations, in addition to counseling exporters on how to comply with the EAR. The Export Enforcement unit is responsible for enforcing the dual-use export control laws. To carry out their enforcement activities, BIS export enforcement agents are empowered to carry firearms, execute search warrants, make arrests, and seize goods about to be illegally exported. Agents work closely with other Federal law enforcement and intelligence agencies throughout the investigations. Export Enforcement uses various tools to carry out its export enforcement programs, including preventive measures such as end-use checks, a Shipper's Export Declaration review program, a Visa Application Review Program, and domestic and international outreach activities. Export Enforcement also works with the Department of Justice's U.S. Attorney Offices to assist them in criminally prosecuting violators of dual-use export control laws. In addition, BIS employs an internal administrative remedy process for sanctioning companies or individuals in violation of the EAR. (See Appendix C

¹Energy does not play an active role in the enforcement of export controls. Therefore, Energy OIG did not participate in this interagency review. However, Energy OIG provided the status of recommendations set forth in previous reports.

²Although the EAA expired on August 21, 2001, the President extended export regulations under Executive Order 13222, dated August 17, 2001, which invoked emergency authority under the International Emergency Economic Powers Act.

³BIS was formerly known as the Bureau of Export Administration.

for the agency-specific Commerce report and Appendix I for the classified Commerce memorandum.)

State. State regulates the export of munitions, as well as related classified and unclassified technical data. State's Directorate of Defense Trade Controls (DDTC)⁴ is responsible for registering persons or industries involved in the export of Defense-related articles and services, approving or denying export licenses, and ensuring compliance with the Arms Export Control Act of 1976 and the ITAR. In September 1990, State initiated a process, known as the Blue Lantern Program, aimed at addressing compliance with export controls for munitions. At the request of DDTC, U.S. Embassy personnel overseas monitor the end use of selected munitions. State also supports Customs in its efforts to enforce laws that are designed to prevent or detect the illegal export of munitions, such as making license determinations at U.S. ports. (See Appendix E for the agency-specific State report.)

Defense. Although a collaborator in Commerce and State licensing and enforcement programs, Defense has no direct responsibility for export enforcement of dual-use items and munitions, with the exception noted below for space launch-related exports. The Defense Technology Security Administration (DTSA)⁵ advises the Under Secretary of Defense for Policy on issues related to the transfer of sensitive technologies and exports of dual-use items and munitions as well as assists in developing export control policies and procedures that are necessary to protect the national security interests of the United States. Also, DTSA prepares the Defense position on export license applications that Commerce and State refer to Defense for review. The Defense Security Cooperation Agency's Golden Sentry program monitors foreign military sales of high-risk exports and the end use of munitions. The DTSA, Space Directorate manages space launch-related export activities, including approval of security plans for U.S. companies in conjunction with exports and monitoring technical meetings and launch-site operations. (See Appendix D for the agency-specific Defense report.)

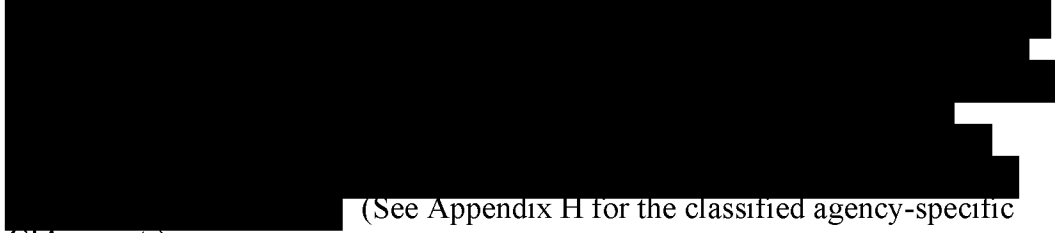
Treasury. Treasury, specifically Customs, enforces several Federal agency export regulations at domestic ports. However, Treasury does not participate in the policymaking or technical reviews of dual-use or munitions license applications. On January 24, 2003, the Department of Homeland Security was created, and on March 1, 2003, Customs was transferred to the new department. Customs' export enforcement responsibilities were split between two new bureaus within the Department of Homeland Security: (1) the Bureau of Customs and Border Protection and (2) the Bureau of Immigration and Customs Enforcement. However, during the time most of the work for this report was completed, Customs was the primary Treasury agency that enforced export regulations and investigated violations of export control laws. Therefore, this report refers to Customs as a Treasury agency.

⁴DDTC was formerly known as the Office of Defense Trade Controls.

⁵DTSA, formerly known as the Defense Threat Reduction Agency, Technology Security Directorate, was reestablished within the Office of the Under Secretary of Defense for Policy on August 31, 2001.

In an effort to target and inspect outbound cargo, Customs inspectors review export data posted in various databases, review outbound manifests, conduct research through the Internet, and conduct inspections. Customs generally exercises its enforcement authority by seizing cargo that is being exported in violation of export laws or regulations. Customs Special Agents work directly with inspectors and import specialists to detect violations of laws enforced by Customs. Customs Special Agents also conduct industry outreach visits designed to educate exporters about dual-use and munitions export laws. (See Appendix F for the agency-specific Treasury report.)

Central Intelligence Agency. The CIA does not have specific responsibility for enforcement of export controls but assists other Federal departments and agencies that are assigned those responsibilities. The primary role for CIA is advisory in both the licensing and enforcement processes. It supports the export licensing and enforcement processes by providing responsible Federal departments with relevant intelligence information. CIA: (b)(3)



(See Appendix H for the classified agency-specific CIA report.)

U.S. Postal Service. The U.S. Postal Service helps postal customers complete Shipper's Export Declaration forms accurately and verifies that customers submit the required forms. In addition, the U.S. Postal Service coordinates with other Federal agencies in providing support for their efforts to enforce export controls. (See Appendix G for the agency-specific U.S. Postal Service report.)

Objectives

Our overall objective for this review was to evaluate the adequacy and effectiveness of the Federal Government's activities to enforce export controls concerning the transfer of militarily sensitive technologies to countries and entities of concern. This includes its efforts to (1) prevent the illegal export of dual-use items and munitions, and (2) investigate and assist in the prosecution or administrative sanctioning of violators of the EAR and the ITAR.

A. License Conditions

Defense and Commerce OIGs found weaknesses in the processes to place and to follow up on reporting conditions⁶ on export licenses. Specifically, Defense OIG found that Defense did not establish policies and procedures to verify whether the export licenses BIS and DDTC approved accurately reflected Defense-recommended conditions. Commerce OIG found that BIS did not adequately monitor dual-use licenses with reporting conditions. The weaknesses identified occurred because Defense procedures did not require that DTSA verify the accuracy of conditions in approved export licenses, and BIS lacked adequate resources to monitor licenses according to the schedules prescribed in its written procedures. Consequently, Defense cannot ensure that critical U.S. military technological advantages are preserved, and Commerce cannot be certain that exports were not diverted to unauthorized end users or that exporters who fail to comply with conditions are being denied subsequent licenses.

Issuance of License Conditions

When applicable, BIS and DDTC refer export license applications to DTSA for a technical review. When it receives a license application, DTSA reviews the information available on the exporter, items to be exported, and destination of the export. It may refer the license application to the Military Departments or other Defense Components to perform a technical analysis. DTSA prepares the Defense position based on the information available and technical analysis and returns the application to BIS or DDTC with approval, Defense-recommended conditions of the license, or a recommendation to deny the license. When Defense approves a license application with conditions, the approval is based on inclusion of the specified conditions; otherwise, Defense may recommend denial of the application. According to Executive Order 12981, dated December 5, 1995, if reviewing departments and agencies are not in agreement on license recommendations, such as on approval with standard conditions, the matter is to be escalated through the dispute resolution process. The EAR allows BIS to limit a transaction authorized under an export license by placing conditions on the license itself. That particular action offers BIS an additional means for monitoring certain shipments.

Accuracy of License Conditions. Defense OIG found that Defense did not establish policies and procedures to verify that export licenses BIS and DDTC approved accurately reflected Defense-recommended conditions. Defense OIG selected 9,890 export license applications that included recommended conditions for approval—5,206 dual-use and 4,684 munitions—in the Defense Technology Protection System (TPS) database to sample. Of the 9,890 applications selected, Defense OIG reviewed 4,976 applications—292 dual-use and 4,684 munitions—for determining whether BIS or DDTC had accurately incorporated Defense-recommended conditions into the approved export licenses. Of the 4,976 export

⁶A reporting condition requires the exporter to submit documentation to BIS regarding the shipment.

license applications reviewed, 347 of the approved licenses either misstated or omitted Defense-recommended conditions.

In addition, of the 4,976 export license applications reviewed, 84 applications were for exports to countries of concern.⁷ For those 84 applications, 7 did not accurately reflect the Defense position for the approved export license. Specifically, those seven export licenses either misstated or omitted Defense-recommended conditions. In the cases where Defense-recommended conditions did not match the U.S. Government positions on the approved export license, it is unclear to Defense OIG whether the recommended conditions were intentionally omitted or a result of human error or whether those conditions were addressed by other means.

Dual-Use License Conditions. Defense did not establish policies and procedures that verified whether BIS-approved export licenses accurately reflected Defense-recommended conditions. Defense OIG selected 5,206 dual-use license applications as its sample and obtained information from the Commerce Export Control Automated Support System for 292 applications. For those 292 dual-use licenses, 9 either misstated or omitted conditions Defense recommended. For dual-use license applications, TPS shows the conditions that Defense recommended but not the final U.S. Government position. DTSA stated that entering U.S. Government positions into TPS was not necessary because DTSA had access to the Commerce Export Control Automated Support System, which allowed DTSA to review the final license.

Of the 292 dual-use licenses reviewed, 63 were for exports to countries of concern. For those 63 applications for exports to countries of concern, 2 of the approved licenses did not accurately reflect the Defense-recommended position. Specifically, the final issued license either misstated or omitted Defense conditions. In one dual-use license case, for a country not listed as a country of concern, Defense recommended an end-use check as a condition; however, BIS did not include the Defense-recommended end-use check on the license. In another license case, to a country of concern, Defense initially recommended denial of the export license application because of risk for diversion to military programs. Ultimately, the license application was escalated through the established interagency review process and it was eventually approved with a Defense condition that stated “No Military End Users.” However, BIS omitted that condition on the export license.

Commerce OIG believes that it is imperative to the integrity of the dual-use licensing process that Commerce either incorporate agreed upon referral agency conditions to the license or, if it disagrees, escalate the matter through the established dispute resolution process. However, Commerce OIG also noted that the absence of the “No Military End Users” condition stated above would not necessarily be detrimental to national security because the license itself is valid and authorizes export only to the stated end users and only for the stated end use.

⁷ Countries of concern are listed within section 126.1 of the Code of Federal Regulations. The Defense OIG’s scope limited the review to Afghanistan, China, Iran, Iraq, and Syria.

Munitions License Conditions. Defense did not establish policies and procedures that verified whether State-approved export licenses accurately reflected Defense-recommended conditions. Of the 4,684 munitions license cases Defense OIG reviewed, 338 either misstated or omitted conditions Defense recommended. For munitions export license cases, TPS includes both Defense-recommended conditions and an optical character reader scanned version of the State-approved export license. To determine whether the 338 discrepancies were actual errors in the approved export licenses, Defense OIG requested that State provide the official hard copies of 138 of the approved export licenses. State provided 32 of the 138 requested licenses. Defense OIG did not receive the additional 106 licenses in time to be considered in the review. Therefore, Defense OIG was unable to determine whether the 338 discrepancies were actual errors in the approved export licenses or errors in the TPS database.

Of the 4,684 munitions license applications reviewed, 21 were for exports to countries of concern. For those 21 applications, the U.S. Government position in 5 of the approved licenses did not accurately reflect the Defense position for the approved export license. Specifically, the U.S. Government position either misstated or omitted Defense-recommended conditions.

In one case, for a country not listed as a country of concern, the license involved exporting components of an unmanned aerial vehicle to Singapore. The Defense-recommended position was approval with the condition that “[d]atalink transmission rates must be less than 10 mbits/second.” However, the TPS version of the approved license states, “Datalink transmission rates must be less than 100 mbits/second.” That error allows a 1,000-percent increase in the data transmission rate capability. Another export license case involved exporting C-130 aircraft components to Italy. The Defense-recommended position was approval with the condition that the contractor “must not: Collect signals, or interpret, analyze, validate or modify any emitter data, regardless of source; b. Offer training beyond operator and maintenance training in an unclassified signals environment; c. Offer or discuss automatic detection and identification of complex signals such as spread spectrum.” However, the TPS version of the approved license omitted the words “must not,” thereby specifically permitting the very items Defense had intended to restrict. Had DTSA developed procedures for its munitions licensing officers to review the approved licenses for their respective cases, DTSA may have been able to identify and correct that discrepancy.

Defense Procedures. Defense did not establish policies and procedures that required its officials to verify that the export licenses issued by BIS and DDTC accurately reflected Defense-recommended conditions. Specifically, DTSA did not develop any formal procedures for its licensing officers to review approved export licenses and ensure that BIS and DDTC accurately incorporated Defense-recommended conditions into the approved export licenses. DTSA officials stated that BIS and DDTC were responsible for accurately incorporating Defense-recommended conditions into the approved licenses. In addition, Defense assumed adequate enforcement programs were in place when it provided the Defense position on an export license application. Because Defense did not establish policies and procedures to ensure that its officials verified that BIS and DDTC had accurately incorporated Defense-recommended conditions into export

licenses, Defense cannot ensure that militarily sensitive technologies are not inadvertently released because of misstated or omitted conditions in approved export licenses. Misstating or omitting conditions in an approved export license could cause inadvertent release of militarily sensitive technologies. Therefore, Defense OIG recommended that the Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) establish policies and procedures that verified inclusion and accuracy of Defense conditions in approved export licenses.

Compliance With Dual-Use License Conditions

BIS has established 54 standard license conditions, of which only 7 require the licensee to submit export documentation to BIS regarding the shipment. Those seven conditions are commonly referred to as reporting conditions. An example of a reporting condition is the requirement that an exporter submit to BIS a copy of the Shipper's Export Declaration and bill of lading or airway bill after the first shipment is made against the license.

Compliance With License Conditions. Commerce OIG found that BIS was not adequately monitoring reporting conditions on dual-use licenses, a problem that was previously identified in the Commerce OIG 1999 export licensing report.⁸ By not monitoring licenses to verify compliance with license conditions, BIS could not be certain that licensed goods were not diverted to unauthorized end users or that exporters who failed to comply with conditions were denied subsequent licenses. BIS' written procedures state that open dual-use licenses with reporting conditions should be monitored weekly or monthly, depending on the condition. Exporters whose licenses have expired are contacted to verify whether an export was made against the license. BIS stated that it did not have sufficient resources to perform all of the followup work. This resulted in a lack of effective monitoring and caused a significant backlog of expired dual-use licenses with reporting conditions that had not been checked for compliance.

Commerce OIG found that several companies received additional dual-use export licenses before BIS verified compliance with reporting conditions on previous licenses. Some of the new licenses were issued to manufacturers of chemicals, firearms and ammunition, and infrared camera technology. The apparent breakdown in the monitoring process has the potential to diminish the deterrent effect that license conditions have on potential violators. In addition, failure to monitor those conditions might degrade the integrity of the interagency licensing referral process, whereby licensing referral agencies, such as Defense and State, might make decisions on future dual-use license applications without having appropriate information on a company's compliance with conditions on previously issued licenses. Finally, lack of monitoring increases the potential that controlled dual-use items might be diverted.

⁸Commerce OIG Report No. IPE-11488, "Improvements Are Needed to Meet the Export Licensing Requirements of the 21st Century," June 1999.

Commerce OIG recommended that BIS (1) take actions to ensure, to the maximum extent practicable, that exporters comply with the reporting conditions on open dual-use licenses, and (2) require that licensing officers thoroughly review a company's compliance with previous license conditions when processing new dual-use licenses. Furthermore, Commerce OIG recommended that BIS consider developing an automated program that sends e-mail reminders to exporters requesting verification and documentation of a shipment that was or will be made during the licensing period. BIS management generally expressed agreement with the recommendation to improve monitoring of license conditions and stated that it will work towards dedicating additional resources to this effort. In addition, BIS management will issue guidance reminding licensing officers to thoroughly review license compliance histories when processing licenses and program the automated license reminder function for licenses monitored by its Export Administration unit into the Conditions Follow-up Subsystem in a new licensing module to be developed in 2004.

B. End-Use Monitoring

Commerce and State OIGs found that the dual-use and munitions end-use monitoring processes were valuable mechanisms for preventing misuse and diversion of controlled U.S. exports. However, the OIGs identified several weaknesses with respect to the end-use monitoring processes. Specifically, Commerce and State did not adequately coordinate end-use checks with other U.S. Government agencies at overseas missions. Commerce OIG found that end-use check training and performance feedback for Commerce's United States and Foreign Commercial Service (US&FCS) officers who conduct end-use checks needed improvement; pre-license checks were sometimes untimely; and product information provided for pre-license checks was sometimes insufficient. In addition, Commerce OIG found that trip reports submitted by BIS' Safeguards Verification Program (Safeguards) teams on the results of their end-use checks could be more timely, improved, and more widely disseminated; and unfavorable pre-license checks did not always result in license denials. State OIG found that the number of munitions end-use checks conducted was low; site visits were not performed at several U.S. overseas missions; feedback to coordinators was not provided on end-use check results; and unfavorable post-license checks did not always result in halting the shipment of munitions. Defense OIG found that DTSA did not have policies and procedures in place for determining whether an end-use check should be recommended as a condition for approval of the export license or to verify that Commerce and State performed Defense-recommended end-use checks. Problems with the end-use check processes have the potential to degrade the quality of the end-use checks performed and negatively impact the Nation's export enforcement efforts. Conversely, Defense OIG found that DTSA, Space Directorate established and executed an effective monitoring program for activities related to space launches.

End-Use Monitoring Process

The dual-use and munitions end-use monitoring processes are valuable mechanisms for preventing the misuse and diversion of controlled U.S. exports. End-use checks (pre-license checks and post-shipment verifications for dual-use exports, and pre-license and post-license checks for munitions) verify the legitimacy of dual-use and munitions export transactions. A pre-license check is used for validating information on export license applications by determining if a firm or individual overseas is a suitable party to a transaction involving controlled U.S.-origin goods or technical data. The results of a pre-license check help determine whether a dual-use or munitions export license is approved. Commerce's post-shipment verification and State's post-license check strengthen the assurances that exporters, shippers, consignees,⁹ and end users will comply

⁹A consignee is the foreign party who is to receive an exported item, usually the buyer. However, the consignee may also be an intermediary for the end user.

with the terms of export licenses by determining whether goods exported from the United States were actually received by the party named on the license and that the items are being used in accordance with the license provisions.

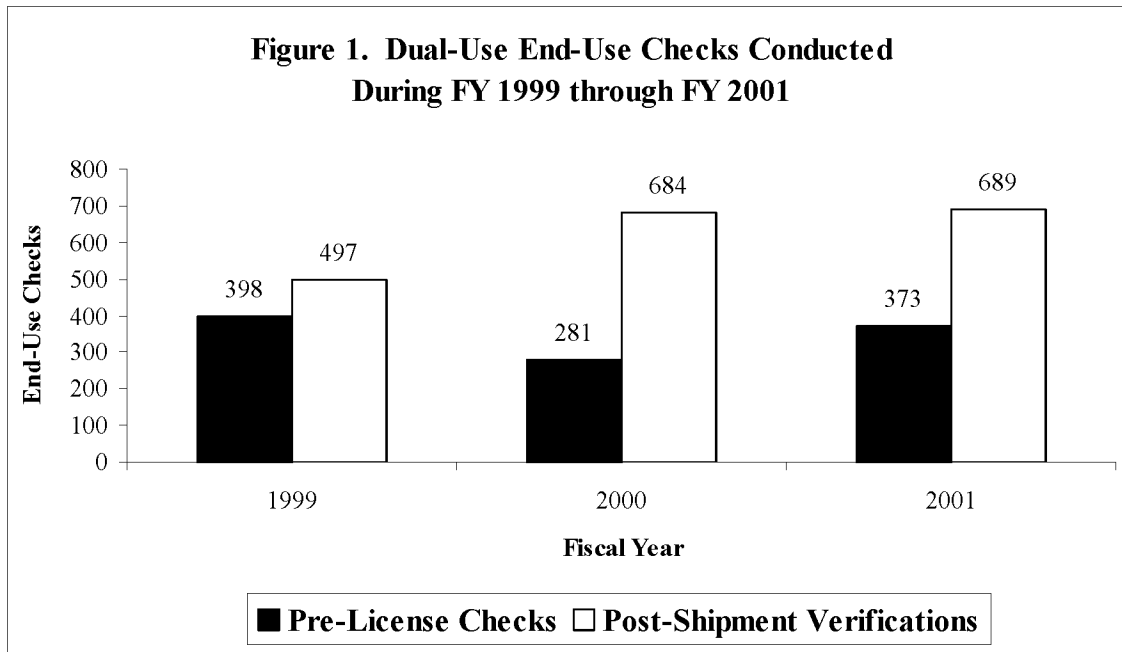
BIS and DDTC administer end-use check programs for dual-use items and munitions, respectively. Within Commerce, US&FCS officers as well as BIS export enforcement agents conduct dual-use end-use checks. Under State's Blue Lantern Program, U.S. Embassy officials conduct end-use verifications for munitions. In addition, the Defense "Golden Sentry" program monitors end use of munitions for foreign military sales. DTSA, Space Directorate is responsible for managing space launch-related export activities, which includes approving security plans for U.S. companies, recommending conditions for approval of export licenses, and monitoring technical meetings and launch-site operations.

Dual-Use Monitoring Process

According to a 1988 Memorandum of Understanding with BIS, US&FCS officers stationed at overseas missions conduct the majority of pre-license checks and some post-shipment verifications.¹⁰ The extensive overseas presence of US&FCS allows for pre-license checks to be conducted expeditiously, helping facilitate the license application process. BIS Safeguards teams, composed of two export enforcement agents, travel to selected countries worldwide and conduct end-use checks that assess the suitability of foreign firms to receive U.S.-origin goods and technologies requiring export licenses. While the Safeguard teams conduct some pre-license checks, they conduct the majority of the post-shipment verifications that determine the disposition of licensed or otherwise controlled goods. The BIS Safeguards teams also conduct outreach visits to foreign firms and provide guidance and support on preventive enforcement matters to the overseas missions' personnel and host country export control officials. In addition, BIS export control attachés stationed in Abu Dhabi, United Arab Emirates; Beijing, China; and Moscow, Russia, conduct end-use checks. By the end of FY 2003, BIS intends to have additional attachés in place in Cairo, Egypt; New Delhi, India; Shanghai, China; and Singapore.

Figure 1 shows the total number of dual-use end-use checks conducted during FY 1999 through FY 2001. Licensing officers, BIS export enforcement agents and analysts, and officials from other Federal agencies involved in the license review process may request dual-use end-use checks.

¹⁰While US&FCS' primary role is to promote U.S. exports, it also assists BIS in preventing the diversion of sensitive U.S. products and technologies.



End-Use Checks Conducted by US&FCS. While Commerce OIG found that dual-use end-use checks were generally being conducted by US&FCS officers in accordance with BIS guidance and procedures, Commerce OIG believed that the program could be made more effective if improvements were made in interagency coordination at overseas missions, US&FCS officer training, and communication between US&FCS overseas missions and BIS.

Interagency Coordination at Overseas Missions. Commerce OIG found that US&FCS officers did not fully coordinate with other embassy sections, such as State's Political and Economic Sections, Customs, FBI, State, and intelligence agencies, in conducting dual-use end-use checks. By not consulting with those sources to obtain non-public information on a company or individual, the potential existed for a US&FCS officer to overlook key information that could be useful in conducting a more thorough check. Examples of increased cooperation occurred in Singapore and Hong Kong after an interagency OIG team visit in September 2002. Specifically, after the OIG visit, the Deputy Chief of Mission in Singapore issued procedures for coordinating end-use checks among embassy sections in Singapore. In addition, a review of pre-license check response cables received from US&FCS Hong Kong since the interagency OIG visit suggests that increased mission-wide coordination (e.g. with Defense and Customs) is under way. Commerce OIG recommended that BIS revise its end-use check handbook section on interagency cooperation at overseas missions to provide specific instructions on coordinating dual-use end-use checks with other U.S. Government agencies. BIS management did not concur with this recommendation and stated that US&FCS personnel are in a better position to decide which other U.S. Government agencies to consult to assist in conducting end-use checks. Commerce OIG reiterated its recommendation that BIS provide specific instructions to US&FCS personnel for coordinating end-use checks with other U.S. Government agencies at overseas missions to ensure that US&FCS

personnel do not overlook key information compiled by those agencies on a company or an individual that is the subject of an end-use check.

Training. Commerce OIG found that most US&FCS officers were not adequately trained on how to conduct end-use checks. For most officers, training consisted of reading the BIS handbook on conducting end-use checks. Because of the importance of the activity in preventing the diversion of dual-use items, Commerce OIG recommended that BIS work with US&FCS to develop and provide end-use check training to US&FCS officers and to put the end-use check handbook on the US&FCS intranet so that commercial officers can readily access the current guidance. Both BIS and International Trade Administration managements concurred with the recommendations, although BIS said that the training was dependent on funding availability.

Communication. Commerce OIG found that BIS did not provide feedback to US&FCS on individual officers' performance of end-use checks nor did US&FCS evaluate its officers specifically on end-use check activities. Commerce OIG recommended that US&FCS work with BIS to obtain feedback on an individual officer's performance of end-use checks and that US&FCS develop specific officer performance criteria for the activity as a way of providing an incentive for officers to conduct more thorough checks. International Trade Administration management did not concur with the recommendation that US&FCS develop specific performance criteria to rate commercial officers on end-use check responsibilities, but it agreed to request regular BIS feedback on an officer's conduct of end-use checks.

Timeliness. Commerce OIG found that dual-use pre-license checks were not always conducted within the BIS-required 28-day turnaround period. The problem may be a result of other duties being given higher priority. Since license applications are placed on hold pending pre-license checks, the checks must be conducted on time to facilitate the export. Therefore, Commerce OIG recommended US&FCS ensure that its officers conduct timely pre-license checks as BIS guidance requires. International Trade Administration concurred and indicated that it will remind officers of their obligations to respond promptly and completely to end-use check requests within the 28-day PLC time limit.

Product Information. Commerce OIG found that BIS was not often providing adequate product information, such as product literature, in request cables for dual-use end-use check. The product literature might have helped US&FCS conduct more thorough and complete checks. Unless an officer possesses a technical background on the applications for controlled items, such as ammonia synthesis converters or filament winding machines, the potential exists for incomplete checks. Therefore, Commerce OIG recommended that BIS enhance the technical information and guidance provided in the request cables. BIS management did not concur with this recommendation but indicated that it will consider providing additional information in its end-use check request cables on a case-by-case basis.

End-Use Checks Conducted by Safeguards Teams. Overall, Commerce OIG found that the Safeguards Verification Program was working reasonably well. However, several areas, such as coordination with other U.S. Government

agencies at overseas missions and the writing and dissemination of trip reports were identified as areas for which improvements would make that program more effective.

Coordination with Other U.S. Government Agencies. Commerce OIG found that Safeguards teams were not regularly meeting with other U.S. Government agencies, such as State's Political and Economic Sections, Customs, FBI, State, and intelligence agencies, at overseas missions nor were the agencies sharing information that could aid in their dual-use end-use checks. Though BIS guidance did not mandate contact with U.S. Government agencies other than US&FCS at overseas missions, contact with the agencies might yield valuable information for the conduct of more thorough end-use checks. Therefore, Commerce OIG recommended that BIS instruct the Safeguards teams to brief Federal agencies at overseas missions about the end-use visits in order to share relevant law enforcement or intelligence information. BIS management partially concurred with this recommendation, stating that Safeguards teams conduct briefings at overseas missions and will continue to do so. While Commerce OIG noted that the teams met with other U.S. Government agencies in only 5 out of the 15 countries visited in FY 2001, Commerce OIG acknowledged BIS' renewed commitment to the briefings.

Safeguards Trip Reports. Commerce OIG found that Safeguards trip reports were not always submitted within 30 days after the conclusion of trips. Delays in submitting reports and entering the data into the BIS database might allow questionable consignees to be granted future export licenses or the information might not be fully vetted during the license referral process. Therefore, Commerce OIG recommended that BIS ensure that agents submit timely trip reports or disqualify them from future Safeguards trip assignments. BIS management concurred with this recommendation.

Commerce OIG also found that Safeguards trip reports were inconsistent in format and content. Without proper documentation or visual enhancements such as photographs (as appropriate), Commerce OIG determined that licensing referral agencies might discount the results or unfavorable results would be overlooked in a lengthy report. Therefore, Commerce OIG recommended that BIS make improvements to the Safeguards report format. BIS management did not concur with the recommendation, and Commerce OIG accepted BIS' decision to adhere to its current guidelines.

In addition, Commerce OIG found that BIS did not regularly forward Safeguards trip reports to US&FCS at overseas missions. Because of their value as potential training materials for US&FCS officers and their interest in receiving them, Commerce OIG recommended that BIS disseminate Safeguards trip reports to US&FCS overseas missions covered by the Safeguards visits. BIS management did not concur with the recommendation, citing the limited amount of classified container storage space at US&FCS overseas missions. BIS thought that the exit briefings provided by Safeguards teams would be most useful to US&FCS personnel. International Trade Administration management agreed that the Safeguards team briefings on the results of the end-use checks would be most helpful to its overseas officers, although it also said that it would take appropriate

measures to secure access to trip reports if they are also sent to the overseas missions.

Munitions Monitoring Process

Section 150 of the Arms Export Control Act of 1976, as amended (Public Law 104-164), "End-Use Monitoring of Defense Articles and Defense Services," provides that, to the extent practicable, the President shall establish a program for the end-use monitoring of munitions that will identify high-risk exports for regular end-use verification. Public Law 104-164 also states that the program, commonly referred to as the Blue Lantern Program, shall be designed to provide reasonable assurance that the recipient complies with U.S. Government requirements and that munitions are used for the intended purpose. DDTC administers the Blue Lantern Program.

To evaluate how effectively the Blue Lantern Program was being implemented overseas, State OIG visited nine missions with a high export dollar value for munitions and a relatively high number of end-use checks. During FY 2001, DDTC conducted 126 end-use checks, for munitions exports valued at \$6.2 billion, at the 9 missions the State OIG visited. Those figures represent 31 percent of all checks performed and 36 percent of the total value of licensed munitions exports in FY 2001. State OIG reported that end-use monitoring could be improved. State OIG identified that the ratio of munitions end-use checks to licenses was low and interagency coordination, site visits, and feedback to coordinators needed improvement.

End-Use Checks Performed. State OIG found that DDTC targets end-use monitoring and verification to only a small number of license applications and approved licenses. For example, the compliance office conducted a total of 410 end-use checks during FY 2001. A total of 214 pre-license end-use checks were initiated, or less than one percent of the approximately 35,000 license applications reviewed. The compliance office also conducted 196 post-license checks. Regular end-use verification of high-risk exports did not occur because the Blue Lantern Program was limited to select licenses that generated concern. Overseas, State OIG observed that end-use monitoring was not consistently implemented. Site visits to foreign consignees (in-country, commercial businesses purchasing munitions through U.S. companies) and end users (typically, host government military services) did not occur at four of the nine missions State OIG visited. State OIG believes that improved Blue Lantern Program guidance and direction are needed, especially with regard to the requirements for conducting site visits. In addition, better reporting and communication are needed on the results of end-use checks. Therefore, State OIG recommended DDTC use an analytical approach with statistical methods as required by the Blue Lantern Program to increase the number of end-use checks performed annually. DDTC concurred with the recommendation.

Coordination with U.S. Embassies. State OIG found that at some U.S. embassies, a lack of communication between the end-use check coordinators and other embassy sections existed. The end-use check monitoring guidance from

DDTC did not provide specific guidance with respect to involving other embassy sections. When other embassy sections were not consulted, the end-use check coordinator possibly overlooked pertinent information or sources that resided in other segments of the mission, for example Customs, intelligence sources, and US&FCS. As a result, the quality of end-use checks may suffer and the final decision may be made based on either incomplete or limited information. State OIG recommended that DDTC ensure that the Blue Lantern Program Handbook encourages missions to adopt the team approach—incorporating other embassy sections—similar to the approach used by U.S. Embassies in Rome and Tokyo. State OIG determined that approach to be a best practice. DDTC concurred with the recommendation.

Site Visits Conducted. State OIG found that, unlike for Commerce’s dual-use checks, site visits were not always conducted as part of the munitions end-use check process. Figure 2 shows that four of the nine overseas missions State OIG visited did not perform any site visits as part of an end-use check.

Figure 2. Site Visits Conducted for Munitions End-Use Checks¹		
U.S. Mission	Blue Lantern Program Coordinator	Site Visit
Ankara	Political-military officer	No
Hong Kong	Economic officer	Yes
Manila	Deputy regional security officer	Yes
Riyadh	Political-military officer	No
Rome	Economic counselor	Yes
Seoul	Customs official	No
Singapore	Economic officer	Yes
Taipei	Economic officer	No ²
Tokyo	Customs official or economic officer	Yes
¹ Table covers only overseas missions visited by State OIG.		
² With one exception.		

DDTC guidance and direction were not clear on the need for site visits. Conversely, the Commerce guidance mandates a site visit for each end-use check. State OIG indicated that if phone interviews were substituted for actual site visits, the likelihood exists that information that might have been derived through first-hand observation will not be obtained. Direct observation through site visits may enable coordinators to verify a company’s commercial viability, number and type of employees, technical and commercial sophistication, legitimate technology needs, and legitimate end uses. State OIG believes that the number of unfavorable checks would increase if DDTC conducted more end-use check site visits and recommended that DDTC revise its Blue Lantern Program Handbook to require site visits and physical inspections as part of its end-use checks. DDTC concurred with the recommendation.

Feedback on End-Use Check Results. State OIG found that DDTC headquarters did not inform end-use coordinators of the results of end-use checks. End-use check coordinators were unsure of the adequacy of the information submitted because they received no feedback from DDTC on the final disposition of the checks. Coordinators stated that the information would be useful and enhance performance and understanding of the end-use monitoring process. Foreign Service Officers are frequently reassigned, and end-use check records in the field provide officers with valuable learning tools. As a means of increasing communication and enhancing its working relationships with the missions, State OIG recommended that DDTC provide Blue Lantern Program coordinators with the final license disposition of the end-use checks they performed. DDTC did not concur with the recommendation, stating that DDTC has extensive communication with overseas missions on Blue Lantern cases. DDTC also stated that they would need to add an additional staff position to comply with the recommendation. State OIG will continue working with DDTC to explore other avenues for enhancing communications with the missions.

Impact of Unfavorable End-Use Checks

Dual-Use License Process. BIS and licensing referral agencies rely on the results of pre-license checks to determine the ultimate disposition of dual-use license applications. Of the 373 pre-license checks on dual-use items conducted in FY 2001, 27 received an unfavorable determination. License applications for 15 of those checks were “returned without action,” 9 were rejected, and 3 were approved with conditions after BIS took action to ensure that the concerns raised during the check were corrected or addressed.

Applications Returned to Requestor Without Action. Commerce OIG found 7 of the 15 cases with unfavorable end-use checks were returned to the applicants by BIS licensing officials without action, despite a recommendation from BIS’ export enforcement officials to reject the applications. Returning the applications to the requestors without action violated the spirit of the 1996 Memorandum of Understanding between licensing and enforcement officials, which called for using the dispute resolution process to resolve licensing recommendation disagreements. However, none of the 7 licenses indicated that the dispute resolution process was used.

No Undercut Rule. When dual-use licenses are not denied, but returned without action, the U.S. is unable to exercise its rights under the no undercut rule established by the multilateral control regimes. This rule helps ensure that a member country of the regime will not approve an identical license without first consulting with the member country that issued a previous denial. However, when a license is returned without action, the no undercut rule does not apply, and other member countries could approve the license. Of the 15 license applications returned without action, 2 fell in the no undercut category. Had they been rejected, the licenses could have qualified under this rule.

Commerce OIG recommended that BIS Export Administration directors and licensing officials adhere to the dispute resolution process outlined in the

1996 Memorandum of Understanding. BIS neither concurred nor nonconcurred with the recommendation stating that Export Administration issued an e-mail to its directors and licensing officers reminding them about the dispute resolution process outlined in the 1996 Memorandum of Understanding. Commerce OIG also recommended that BIS re-evaluate the guidance provided in the 1996 Memorandum of Understanding considering the return of license applications without action. BIS nonconcurred with the recommendation stating that the criteria for making that determination is clear in the 1996 Memorandum of Understanding and the EAR.

Furthermore, Commerce OIG recommended, as in 1999, that BIS disseminate negative pre-license check results to each licensing referral agency. In response to the Commerce OIG 1999 export licensing report, BIS agreed to inform licensing referral agencies when it receives a negative result on a pre-license check that involves a case referred to them, understanding that the additional information may affect the original position on the application. However, of the 15 license applications that were returned without action during FY 2001, Commerce OIG identified 4 instances in which the official case history did not indicate that the referral agencies were notified of an unfavorable pre-license check or agreed with the decision to return the license application without action. Because the referral agencies might have reversed their decision to recommend approval of a license application had they known about the unfavorable pre-license checks, Commerce OIG reiterated its 1999 recommendation that BIS notify the licensing referral agencies of any unfavorable pre-license check results and the BIS subsequent recommendation to return the relevant license application without action. BIS neither concurred nor nonconcurred with the recommendation stating that the agencies already have access to end-use check information in the Export Control Automated Support System.

Munitions License Process. The effectiveness of end-use monitoring can largely be determined through the number of potential illegal export activities that are halted. The Blue Lantern Program addresses only transactions occurring through the munitions licensing process. Unlicensed transactions are not monitored per se; however, the watch list¹¹ may provide information on entities suspected of engaging in export transactions without a license when one is required. For the 9 missions visited, State OIG reviewed 23 unfavorable or negative license decisions that occurred during FY 2001 and FY 2002. Of those 23 end-use checks, 17 were pre-license and 6 were post-license.

Pre-License Checks. Of the 17 unfavorable pre-license end-use checks, 12 resulted in the license application being returned without action and a watch list entry added to the database. For the remaining 5 unfavorable pre-license end-use checks, 2 were denied and 3 were subsequently approved. After an unfavorable pre-license end-use check, a license can be subsequently approved by revising the conditions of the license.

Post-License Checks. Of the 23 unfavorable end-use checks, 6 were categorized as post-license end-use checks. DDTC officials provided the

¹¹ Automated database of individuals and organizations that have been identified as warranting increased scrutiny for export license purposes.

following information: one license was approved with additional conditions placed on the license; two licenses were returned without action (the checks were originally categorized as pre-license, later renamed post-license in case the company decided to resubmit their application); and three were approved and referred to the Compliance Enforcement Branch for further review. Officials also stated that four of the six companies listed on the licenses were placed on the watch list.

Unverified End-Use Checks. In addition to categorizing end-use checks as unfavorable, the compliance office may categorize the licenses as unverified, when the coordinator was unable to confirm the contract or shipment order. For the missions State OIG visited, 11 end-use checks were categorized as unverified. Some foreign countries, as a rule, do not cooperate with U.S. export control requirements even though those countries expect to make future purchases of U.S. munitions. State OIG found that of the 11 unverified cases, 4 were for pre-license checks and 7 for post-license checks.

As recommended by the compliance office, three of the four pre-license applications were returned without action, and one was approved with provisos. State OIG noted that the one license for Taiwan approved with provisos was approved without sufficient information to make a favorable or unfavorable determination. The license value was small, one radar valued at \$1,460, and the licensing officer did not believe that receipt of insufficient information was worth holding up the license. Although he could not confirm the order with the Taiwanese Navy as the end user, the foreign consignee appeared to be a legitimate company with a good reputation and cooperated fully with the end-use check.

For the seven unverified post-license checks State OIG reviewed at Embassy Riyadh, six were orders from the same foreign consignee under different licenses. The foreign consignee was placed on the watch list. According to the compliance office, shipments on only one of the six licenses were made and a Blue Lantern Program level-one check¹² on this particular license was initiated. At the time of the OIG review, Custom was investigating the case. For the other post-license checks, according to compliance officials, no derogatory information was found on the foreign consignee; however, the order for telecommunications equipment valued at \$1,780 could not be confirmed with the Saudi military. The only action taken was placing the foreign consignee on the watch list. Because the licenses in those cases are still valid, a chance exists that additional items could be shipped despite the inability to verify information on the licenses.

State OIG recommended that DDTC should take action to prevent the shipment of munitions on a license if the Blue Lantern Program post-license check is either determined to be unfavorable or pertinent information cannot be verified, unless the action would interfere with an ongoing investigation. DDTC did not concur with the recommendation, stating that unverified post-check results do not provide a sufficient basis to revoke a license in all cases.

¹²There are three end-use check levels of priority under the Blue Lantern Program, with level-one being the highest priority and level-three the lowest. Level-one end-use checks involve specific information about actual or potential illegal retransfers or diversions.

Defense-Recommended End-Use Checks

Defense lacked criteria to evaluate whether recommending end-use checks as a condition of approval for 565 export license applications—556 dual-use and 9 munitions—was adequate to protect national security objectives. Also, 3,070 export license applications—3,023 dual-use and 47 munitions—were for exports to countries of concern. The Defense position on 261 of those 3,070 applications recommended an end-use check.

Dual-Use Licenses. The TPS database contained 11,830 dual-use export license applications for FY 2000 through FY 2002 that were approved with conditions. Defense OIG found that of the 11,830 dual-use license applications, Defense recommended end-use checks as a condition of approval for 556. Of the 11,830 dual-use export license applications reviewed to identify requested end-use checks, 3,023 were related to countries of concern. Defense recommended end-use checks as a condition of approval for 261 of the 3,023. Defense did not have followup procedures for obtaining the results of the end-use checks. Commerce did not routinely inform DTSA of the end-use check results. Therefore, Defense had no assurance that Commerce performed the recommended end-use checks.

Defense recommended 565 end-use checks as a condition of approval for the 556 dual-use license applications. Defense OIG verified the performance of 81 Defense-recommended end-use checks; however, Defense OIG could not ensure that Commerce performed the remaining 484 checks. Defense OIG recommended that the Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) establish criteria and guidance for DTSA and Defense Components for requiring enforcement actions, to include considering risks associated with the adequacy of export enforcement programs when developing Defense conditions. Defense OIG also recommended that the Deputy Under Secretary Defense (Technology Security Policy and Counter-Proliferation) establish policies and procedures for DTSA and Defense Components for obtaining, reviewing, and assessing the adequacy of the results of enforcement actions Defense requires as conditions for approval of a dual-use export license application. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) did not comment on those recommendations.

Munitions Licenses. The TPS database contained 10,253 munitions export license applications for FY 2000 through FY 2002 that were approved with conditions. Defense OIG found that of the 10,253 munitions license applications, Defense recommended end-use checks as a condition of approval for 9. Although 47 of the 10,253 munitions export license applications were related to countries of concern, Defense did not recommend any end-use checks as a condition for approval. Defense did not have followup procedures that would obtain the results of the end-use checks. Because Defense was not routinely informed of the results for State's end-use checks, Defense had no assurance whether State performed the recommended end-use checks.

Defense recommended nine end-use checks as a condition of approval for the nine munitions license applications. Defense OIG verified the performance of three Defense-recommended end-use checks; however, the Defense OIG could not ensure that State performed the remaining six checks. Defense OIG recommended that the Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) establish criteria and guidance for DTSA and Defense Components for requiring enforcement actions, to include considering risks associated with the adequacy of export enforcement programs when developing Defense conditions. Defense OIG also recommended that the Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) establish policies and procedures for DTSA and Defense Components for obtaining, reviewing, and assessing the adequacy of the results of enforcement actions Defense recommends as conditions for approval of a munitions export license application. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) did not comment on those recommendations.

Defense Monitoring

Golden Sentry. In 1996, the Arms Export Control Act was amended to require an end-use program for arms sales and transfers made under the authorities contained in the Arms Export Control Act and the Foreign Assistance Act of 1961, specifically foreign military sales and grant programs. The amended Act requires controls for government-to-government programs in accordance with standards for identifying high-risk exports developed under the Arms Export Control Act. The Foreign Assistance Act requires that Defense supervise end-item use of munitions provided under Foreign Assistance Act grant programs. Although the Arms Export Control Act required that in 1996 such a program be established, the Golden Sentry program did not become operational until April 2002. As of January 2003, the Defense Security Cooperation Agency was in the process of developing the objectives of the Golden Sentry program and formulating end-use monitoring guidelines.

Space Launch. DTSA, Space Directorate is responsible for managing space launch-related export activities, to include approving security plans for U.S. companies in conjunction with exports and monitoring technical meetings and launch-site operations. State is responsible for approving export license applications for items related to space launch activities. DTSA dedicated a space launch monitoring division to review license applications as well as develop and implement the technology safeguard programs for space launches of U.S.-made equipment on foreign launch vehicles.

Defense OIG found that DTSA, Space Directorate established and executed an effective monitoring program for activities related to space launches. Defense OIG found that DTSA, Space Directorate was adequately resourced; an effective training program was implemented; policies and procedures for the execution of the monitoring program were in place and being followed; reimbursement procedures requiring U.S. companies to reimburse DTSA, Space Directorate for all support expenses were in place; and monitoring efforts were closely

documented and maintained. As a result, Defense had reasonable assurance that space launch-related technology was not inadvertently released to or deliberately obtained by potential adversaries.

C. Export Enforcement

Treasury and Commerce OIGs found numerous factors that impaired the U.S. Government's efforts to enforce export controls for dual-use items and munitions. Treasury and Commerce OIGs identified weaknesses in CBP: (b)(7)(E)

[REDACTED]

Commerce OIG identified weaknesses in BIS' export enforcement process that impacted its ability to prevent and detect dual-use export control violations and help prosecute violators, although some of the weaknesses were partly dependent upon external factors. Those weaknesses were the result of insufficient Export Enforcement management oversight; inconsistent and untimely license determination processing; a nontransparent and untimely administrative remedy process; lack of followup on delinquent administrative penalty accounts; insufficient guidance and training for agents; and need for greater interagency coordination. As a result of weaknesses identified in the export enforcement process, both Treasury and Commerce OIGs reported that CBP: (b)(7)(E)

CBP: (b)(7)(E) In addition, both Treasury and Commerce OIGs agreed that CBP: (b)(7)(E)

[REDACTED]

Legislative Authority

The primary legislative authority for controlling dual-use items is the EAA. Under the EAA, BIS administers the EAR by developing export control policies, issuing and monitoring export licenses, and enforcing the laws and regulations on dual-use items for export. The EAR also authorizes Customs and the U.S. Postal Service to take appropriate actions that will help ensure that individuals and organizations comply with export control laws and regulations. The EAA, enacted in 1979, most recently expired on August 21, 2001. Under Executive Order 13222, dated August 17, 2001, the President invoked emergency authority under the International Emergency Economic Powers Act to extend the export regulations. Since 1990, however, both the Congress and the Administration have tried unsuccessfully to rewrite the basic law that authorizes the President to regulate dual-use exports from the United States. According to U.S. Government officials involved in enforcing dual-use export controls, new legislation is needed to better protect the national security of the United States, deter acts of terrorism,

¹³Decrementation involves CBP: (b)(7)(E)

[REDACTED]

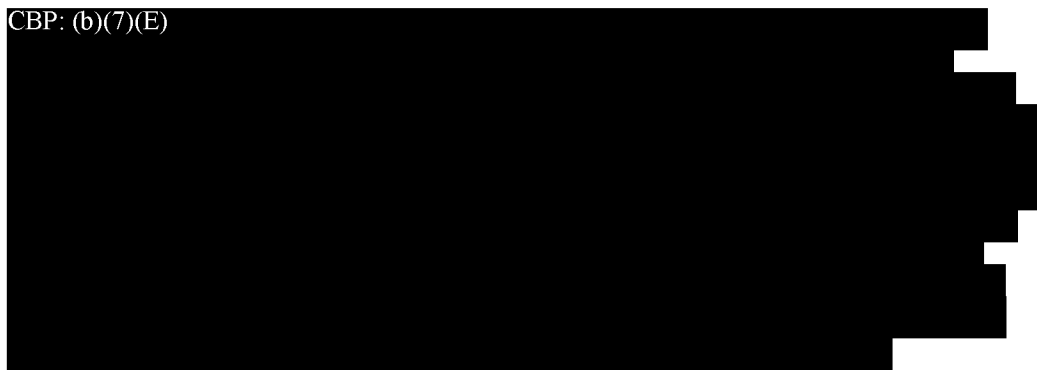
stem the proliferation of weapons of mass destruction and their delivery systems, promote U.S. foreign policy objectives, and to enhance the U.S. Government's export enforcement authority. Absence of any statutory framework reflecting today's proliferation and terrorist threats seriously undermines the U.S. Government's efforts to administer and enforce an export control system capable of preventing illegal dual-use exports which can threaten U.S. security. As such, Commerce OIG believes new export control legislation is needed to address those threats, as well as bolster both BIS' and Customs' regulatory authority over dual-use items, stiffen penalties for violations, and demonstrate the U.S. Government's commitment to maintaining strong export controls.

Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of munitions. The statutory authority of the President to issue regulations with respect to exports of munitions was delegated to the Secretary of State by Executive Order 11958. As a result of delegation of authority by the Secretary of State, DDTC primarily administers these regulations (35 FR 5422). State relies on Treasury to implement Section 127.4 of the ITAR, which grants Customs authority to enforce the export of munitions.

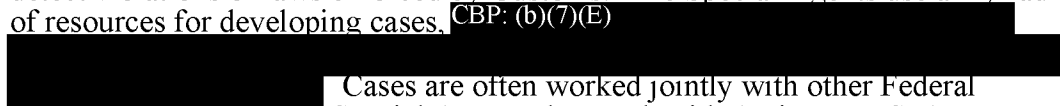
Treasury's Export Enforcement Activities

Although it does not participate in the policy-making or technical review aspects of the dual-use or munitions export license application processes, Treasury has enforcement responsibilities under the EAA and Arms Export Control Act. Customs is the primary Treasury agency that enforces several Federal agency export regulations at domestic ports. Customs is responsible for ensuring that all exports, whether licensed or unlicensed, comply with applicable laws, regulations, and export licensing requirements. Customs also investigates violations of export laws pertaining to dual-use items and munitions.

CBP: (b)(7)(E)



Customs Special Agents work directly with inspectors and import specialists to detect violations of laws enforced by Customs. The Special Agents use a myriad of resources for developing cases. CBP: (b)(7)(E)



Cases are often worked jointly with other Federal agencies including BIS. Special Agents also work with Assistant U.S. Attorneys

to help prosecute criminal cases in Federal court. CBP: (b)(7)(E)

Customs Special Agents also conduct industry outreach visits designed to educate exporters about dual-use and munitions export laws.

Treasury's Investigative Process. Treasury OIG reviewed Customs efforts to investigate illegal exports and assist in the prosecution of violators of export regulations. Treasury OIG interviewed Customs Special Agents regarding their efforts to: develop leads and conduct export enforcement investigations; work with other local and Federal law enforcement agencies to investigate export control violations; work with Assistant U.S. Attorneys to investigate and prosecute export enforcement cases; and conduct outreach visits in connection with Project Shield America¹⁴—a program intended to deter the illegal export of dual-use items and munitions. Treasury OIG found that strategic investigative efforts for Customs in FY 2002, resulted in 59 arrests, 40 indictments, and 47 convictions of export violators. In addition, Customs Special Agents indicated they initiated over 70 investigative leads as a result of the Project Shield America outreach visits conducted during FY 2002. CBP: (b)(7)(E)

Limitations of the Automated Export System. Treasury OIG found that CBP: (b)(7)(E)

AES is a joint venture among Customs, the Foreign Trade Division of Commerce's Bureau of Census,¹⁵ BIS, DDTC, other Federal agencies, and the export trade community. The exporting community electronically transmits export shipment data to Customs through AES. The electronic transmissions include data on dual-use items and munitions. AES is the central focal point for these transmissions. Customs processes 1.6 million AES documents every month.

About 85 percent of all exporters (excluding those who export to Canada) use AES to transmit their Shipper's Export Declaration data to Customs. Outbound Customs inspectors indicated to Treasury OIG that: CBP: (b)(7)(E)

¹⁴CBP: (b)(7)(E)

¹⁵Census has primary responsibility for the collection, compilation, and publication of official statistics on U.S. exports. Census uses the export data reported on Shipper's Export Declarations that are submitted electronically through AES to collect and compile official export trade statistics.

CBP: (b)(7)(E)

Decrementation of Export Licenses. CBP: (b)(7)(E)

Export licenses generally allow a specific manufacturer to ship a designated quantity or value of product to a specific consignee or end user within a specified timeframe. CBP: (b)(7)(E)

CBP: (b)(7)(E)

CBP: (b)(7)(E)

Commerce's Export Enforcement Activities

The main mission of BIS' Export Enforcement is to deter, identify, investigate, and apprehend violators of dual-use export control laws and regulations, and then seek criminal and administrative sanctions. Export Enforcement investigates alleged dual-use export control violations, using enforcement tools such as

¹⁶While Commerce OIG did not conduct extensive fieldwork on the issue of decrementing, Commerce OIG spoke with BIS' Deputy Assistant Secretary for Export Administration and with senior attorneys within the Office of Chief Counsel to learn their views on the issue.

interviews, license determinations, surveillance, subpoenas, arrest warrants, and seizures of goods and electronic data. BIS' export enforcement activities also include preventive efforts, such as (1) on-site reviews of select Shippers Export Declarations at U.S. ports before goods are exported to uncover attempts to ship dual-use items illegally; (2) outreach visits with exporters to both educate the companies about the dual-use export control laws and seek cooperation in identifying illegal export activity within their respective industry; and (3) efforts to prevent unauthorized access to controlled technology or technical data by foreign nationals visiting the United States. In addition, BIS export enforcement agents participate in domestic and international export enforcement conferences with the global trade community and foreign governments to educate them about dual-use export control laws. BIS export enforcement officials also conduct negotiations with foreign governments to help strengthen their efforts to enforce export control laws and build effective international mechanisms to prevent the acquisition and transshipment of weapons of mass destruction and their delivery systems. To meet its mission and conduct many of its export enforcement activities, Export Enforcement coordinates its efforts with other Federal agencies, including Customs, the FBI, and U.S. Attorney Offices.

Commerce's Investigative Process. Commerce OIG examined Export Enforcement's investigative process and identified a number of systemic weaknesses that warranted BIS' attention and improvement.

Stronger case management oversight is needed. Export Enforcement was responsible for designing standard investigative operating procedures for its staff and regularly monitoring compliance with those procedures. Commerce OIG found that management oversight was inadequate with regard to (1) monitoring case development, and (2) assessing and prioritizing case leads.

License determinations need to be more consistent and timely. BIS' Export Administration processes license determinations¹⁷ that Export Enforcement needs for its investigations. Commerce OIG found inconsistent license determinations involving the same product and untimely license determinations that sometimes caused investigations to be delayed or terminated.

The administrative remedy process needs to be more transparent and timely. Commerce OIG found the rationale with regard to how administrative penalties were determined was not transparent. Specifically, there was no table of penalties or guidelines to assist the decision-makers in determining the appropriate administrative sanction. Commerce OIG also found that the processing of administrative cases was not always timely.

Delinquent penalty accounts need to be followed up. Commerce OIG found that Export Enforcement was not taking enforcement actions against companies and individuals who failed to pay imposed administrative monetary

¹⁷ A license determination is an official finding from Export Administration that indicates: (1) whether the dual-use item in question is subject to the EAR; (2) the reason for control, if any; (3) the export control commodity number for the item; and (4) the licensing policy for the export of the item to the specified destination.

penalties. Commerce OIG found several delinquent accounts, which had outstanding penalties exceeding \$300,000.

Better case management guidance and agent training should improve enforcement capabilities. While BIS completed a major overhaul of its *Special Agent Manual* during this OIG review, Commerce OIG found that Export Enforcement's new manual still lacked some policies and procedures that are needed to guide export enforcement agents in conducting investigations, and that training was not consistently provided to the agents.

Better cooperation with other Federal law enforcement and intelligence agencies could strengthen its investigative process. Commerce OIG reported that better relations with other Federal law enforcement and intelligence agencies could improve BIS' investigative process.

Commerce OIG found that some weaknesses in the investigative process were partly dependent upon factors external to BIS. (See the Interagency Coordination section below for further details.) However, Commerce OIG noted that the cumulative effect of these inadequacies in BIS' investigative process has resulted in few criminal convictions and administrative sanctions from the many cases opened by Export Enforcement. For example, out of an average yearly caseload of 1,038 cases in FY 2002, 3 criminal cases were successfully prosecuted (that is, convictions) and 25 administrative enforcement cases were closed with sanctions.

To rectify the deficiencies, Commerce OIG recommended that Export Enforcement management better monitor investigations and ensure that its staff properly develops and processes cases; provide agents with better guidance and investigative tools for developing cases for prosecution; and be more proactive in building stronger relationships with other agencies that will enhance cooperation and coordination in enforcing dual-use export controls.

BIS indicated that many of the issues raised in the Commerce OIG's report had already been identified by BIS management, and those items already have or are in the process of being addressed. BIS also disagreed with Commerce OIG's finding that BIS' investigative process produced few criminal prosecutions and administrative sanctions and questioned the linkage between few prosecutions and sanctions and inadequate case management and license determinations. However, BIS agreed to take action to rectify some of the enforcement weaknesses identified by Commerce OIG. Specifically, BIS recognized the need to prioritize cases to reflect law enforcement policy and the likelihood of prosecution, to have more management oversight of the investigative process, to provide better guidance and investigative tools to its agents, and to ensure that license determinations are completed in an accurate and timely manner. BIS also indicated that it would incorporate strong case management procedures and organizational information into its *Special Agent Manual* and update the manual regularly and that it was in the process of developing new agent training courses. BIS said that it would develop a list of aggravating and mitigating factors, rather than a table of penalties, to be used as a guide in determining administrative penalties, and it was designing a new streamlined approach to processing administrative cases. Finally, BIS reported that it is correcting its procedures

regarding delinquent penalty accounts and will take appropriate actions against delinquent companies and individuals to collect overdue fines.

License Determination Process

The Customs' EXODUS Command Center serves as a liaison between Customs' field personnel and several Federal agencies that issue export licenses. When Customs inspectors and Special Agents have questions about whether outbound cargo should be licensed (dual-use items and munitions), the inspectors and Special Agents send a license determination request to the EXODUS Command Center. The EXODUS Command Center refers the request to the appropriate Federal licensing agency to determine whether the exporter must obtain a license for the outbound shipment before it leaves the United States. During FY 2002, the EXODUS Command Center referred license determinations to Commerce, State, and Treasury's Office of Foreign Assets Control. CBP: (b)(7)(E)

[REDACTED]

Commerce and Customs Process. Commerce and Customs work together to process license determinations that pertain to dual-use items. The EAA allows Customs to detain a shipment for up to 20 days, after which time Customs must either formally seize or release the goods. Within the 20-day window, Customs must ascertain whether the item is controlled under the EAR, and whether it requires a valid Commerce license for export.

Despite an informal agreement between Commerce and Customs that calls for Commerce to process license determinations within 20 calendar days, Treasury and Commerce OIGs found that Export Administration's processing of license determinations was untimely in FYs 2001 and 2002. Treasury and Commerce OIGs identified the following causes for the untimely license determination processing: CBP: (b)(7)(E)

[REDACTED]

Treasury and Commerce OIGs recommended that Customs and BIS work together to resolve the problems that caused Commerce to process some license determinations in an untimely manner. Customs and BIS concurred with the recommendation. In addition, Commerce OIG recommended that BIS

CBP: (b)(7)(E)

[REDACTED]

State and Customs Process. License determinations are forwarded from the Customs' EXODUS Command Center to State's licensing office for one of the

following reasons: CBP: (b)(7)(E)

Customs inspectors indicated they devoted more resources to targeting and inspecting munitions because State supported Customs export enforcement efforts. During FY 2002, State processed 781 license determinations for Customs that resulted in Customs seizing 662 munitions shipments. Accordingly, 85 percent of the license determinations Customs referred to State resulted in seizure.

Currently there is no formal agreement between State and Customs that requires the processing of license determinations to be completed within a specific timeframe. However, the licensing office takes less than a week to make a license determination. One State official oversees all the requests and meets with the designated Customs official from the EXODUS Command Center several times a week. State OIG's review of the munitions license determination process found that the response time was adequate. In most cases, license determinations are made in 1 or 2 days.

Interagency Coordination

Interagency cooperation on export enforcement is essential to better safeguard national security and foreign policy interests of the United States. The collaboration is imperative for using limited investigatory resources efficiently, gaining access to the resources, information, and expertise of others, reducing duplicative efforts, and achieving successful prosecutions and prevention. Commerce OIG examined the relationship of BIS' Export Enforcement with Customs, U.S. Attorneys, the FBI, and the CIA. In addition, Commerce and U.S. Postal Service OIGs reviewed coordination between Export Enforcement and the U.S. Postal Service. Commerce OIG expressed concern about the level of cooperation among the Federal law enforcement and intelligence agencies enforcing dual-use export control laws.

Commerce and Customs. Commerce and Customs have overlapping responsibilities for criminal investigations and outreach efforts to educate exporters about dual-use export control laws and regulations. In 1993, Commerce and Customs entered into a Memorandum of Understanding, which outlined their respective authorities and procedures for coordinating their law enforcement activities. Though coordination between the two agencies has improved since 1993, in regard to increased cooperative educational outreach efforts and joint investigations, Commerce OIG found that more could be done to enhance the relationship between the agencies to better utilize limited law enforcement resources.

Cooperation Between Agencies. Commerce OIG identified areas in which the agencies need to evaluate and improve their cooperative efforts. CBP: (b)(7)(E)

CBP: (b)(7)(E)

[REDACTED]

Commerce OIG found several reasons for the limited cooperation between the agencies: (1) interpersonal relationships were a key factor in how well the agencies worked together (Some BIS export enforcement managers and agents were more proactive than others in networking with their Customs counterparts.); (2) the September 11, 2001, terrorist attacks shifted the priorities within Customs Trade Enforcement Group from dual-use items to a greater focus on the export of munitions and weapons of mass destruction and laundering of terrorist funds; and (3) despite the 1993 agreement, some rivalry between the agencies remained, particularly with regard to which agency should lead a joint investigation.

Area for Improvement. Commerce OIG identified one area offering opportunities for greater cooperation between the agencies - CBP: (b)(7)(E)

[REDACTED]

[REDACTED] In FY 2002, Customs seized 49 shipments of dual-use items and 662 shipments of munitions. CBP: (b)(7)(E)

[REDACTED]

CBP: (b)(7)(E)

[REDACTED]

CBP: (b)(7)(E)

[REDACTED]

COMMERCE OIG: (b)(7)(E)

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COMMERCE OIG: (b)(7)(E)



COMMERCE OIG: (b)(7)(E)



COMMERCE OIG: (b)(7)(E)



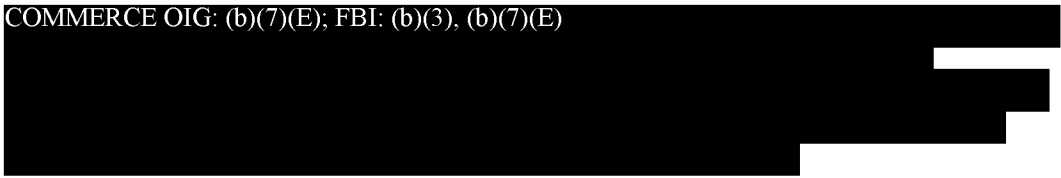
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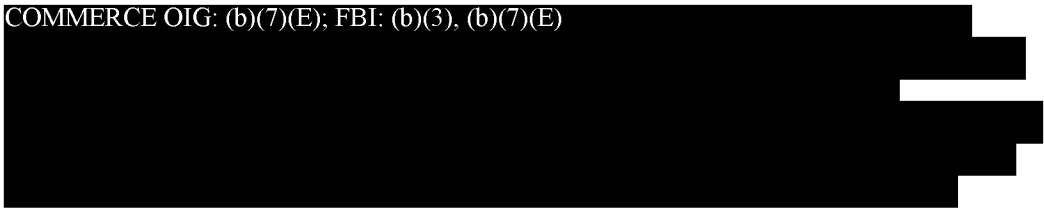
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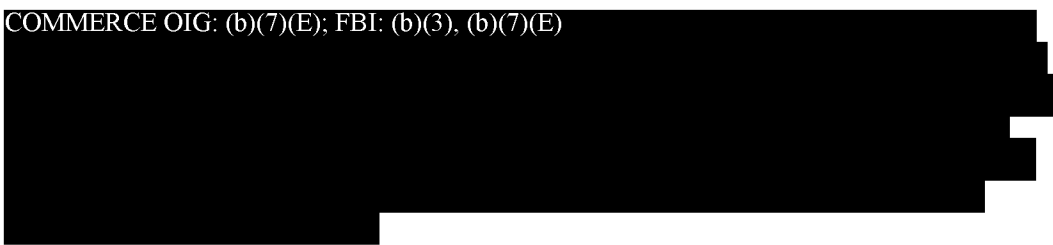
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COMMERCE OIG: (b)(7)(E)



Appendix A. Scope and Methodology

Interagency Scope

The interagency review focused on the adequacy and effectiveness of the Federal Government export enforcement activities concerning the transfers of militarily sensitive technologies to countries and entities of concern, including efforts to (1) prevent the illegal export of dual-use items and munitions, and (2) investigate and assist in prosecution of the violators of the EAR and the ITAR. In addition, the OIG review teams evaluated their respective agency efforts to implement recommendations from previous OIG reports prepared pursuant to the National Defense Authorization Act of 2000. The participating OIG review teams for this year's review were from Commerce, Defense, State, the Treasury, CIA, and the U.S. Postal Service.

Interagency Methodology

Review Approach. To coordinate the review of interagency export enforcement issues and determine the work to be performed by each OIG team, the six OIGs formed an interagency working group and held monthly meetings while conducting agency-specific reviews. The OIG review teams dealt with personnel in their respective agencies and contacted representatives of other countries while traveling overseas. The interagency review was conducted from May 2002 through March 2003.

Agency-Specific Methodology

Appendixes C through I contain the agency-specific OIG reports and the methodology used for each review. The information gathered and the analyses performed in developing those reports were used to produce the interagency report.

Commerce OIG Methodology. Commerce OIG assessed the adequacy and effectiveness of the BIS export enforcement program in preventing the illegal export of dual-use items and investigating and assisting in the prosecution of violators of the EAR. Specifically, Commerce OIG reviewed the following BIS activities: (1) conduct of investigations (including the adequacy of case leads and case management, administrative enforcement proceedings, and training of agents); (2) interactions with the export licensing, law enforcement, and intelligence communities, and with U.S. Attorney Offices; (3) monitoring license conditions by both Export Enforcement and Export Administration; (4) outreach and education that would provide U.S. companies with export control guidance and obtain investigative leads; and (5) end-use checks, including pre-license checks, post-shipment verifications, and the Safeguards Verification Program.

The review methodology included an examination of relevant export licensing, enforcement, and other documents, laws, and regulations, end-use check cables and guidance, and interviews with numerous BIS managers, export enforcement agents and analysts, licensing officials, and attorneys. Commerce OIG also examined closed investigatory case files for FY 2001 and FY 2002, a chronology of training completed by BIS export enforcement agents over the prior five years, Export Enforcement's 1989 and 2002 *Special Agent Manual*, and Office of the Director Memoranda.

Commerce OIG also met with US&FCS managers and officers. Externally, Commerce OIG met with officials from Defense (Defense Intelligence Agency and U.S. Air Force), Department of Justice (FBI and U.S. Attorney Offices), State, and Treasury (Customs); the CIA; and the U.S. General Accounting Office. Commerce OIG also met with representatives of a shipping company and a freight forwarder located in Baltimore, Maryland, and with officials from the Port of Baltimore. Furthermore, Commerce OIG conducted two electronic surveys of export enforcement officials and commercial officers to solicit input on the adequacy of BIS export enforcement and end-use check programs, respectively.

In addition to its work at Commerce headquarters, Commerce OIG visited four of the eight BIS export enforcement field offices, including those in Herndon, Virginia; New York, New York; and Irvine and San Jose, California. Commerce OIG also met with various officials stationed at the American Consulate in Hong Kong and the U.S. Embassy in Singapore, including those with the US&FCS, State's Economic and Political Section, Customs, FBI, Defense, and other relevant agencies. In addition, Commerce OIG met with officials of the Hong Kong Trade and Industry Department, Customs and Excise Department, and the Commerce, Industry, and Technology Bureau. Commerce OIG also participated in a post-shipment verification that US&FCS personnel conducted in Singapore.

Defense OIG Methodology. Defense OIG evaluated the adequacy and effectiveness of the Defense export enforcement activities concerning the transfer of militarily sensitive technologies to countries and entities of concern. Specifically, Defense OIG obtained electronic and hard copies of export applications that verified whether Commerce or State included the Defense conditions in approved export licenses. FBI: (b)(3), (b)(7)(E)

Defense OIG reviewed the DTSA process and procedures for monitoring foreign space launch activities and reporting potential violations of license conditions and Technology Transfer Control Plans.


The review methodology included interviews with officials from the offices of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence); the Deputy Under Secretary of Defense (Policy Integration); DTSA; the Defense Criminal Investigative Service, Defense OIG; the Defense Reutilization and Marketing Service, Defense Logistics Agency; the Defense Security Cooperation Agency; and the Defense Intelligence Agency. In addition, Defense OIG visited the Navy International Programs Office; the Air Force Office of International Affairs; the American Consulate in Hong Kong; the

American Institute of Taiwan; and U.S. Embassies in Saudi Arabia, Singapore, and Turkey.

State OIG Methodology. State OIG evaluated DDTC's monitoring of commercial Defense trade exporters of items on the USML and related compliance activities. Specifically, State OIG evaluated the effectiveness and reliability of the DDTC end-use check process, also known as the Blue Lantern Program, for FY 2001 and FY 2002. State OIG reviewed program guidance and other relevant source documents at DDTC and overseas missions, including cooperation with other overseas mission elements. In addition, State OIG in conjunction with Treasury OIG reviewed the enforcement of export regulations under a cooperative agreement between State and Customs.

The review methodology included interviews with officials from DDTC and site visits to the American Consulate in Hong Kong; the American Institute of Taiwan; and U.S. Embassies in Italy, Japan, Korea, Philippines, Saudi Arabia, Singapore, and Turkey. In addition, State OIG participated in domestic fieldwork conducted at Customs ports in Baltimore, Maryland; El Paso, Texas; and Miami, Florida.

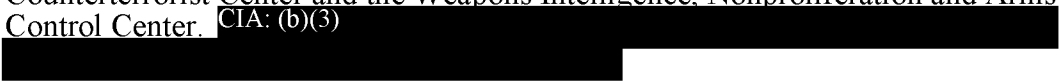
Treasury OIG Methodology. The Treasury OIG evaluated the adequacy of Customs' export enforcement efforts, including its review of U.S. exports for compliance with licensing requirements. Specifically, the Treasury OIG evaluated Treasury's efforts CBP: (b)(7)(E)



The review methodology included interviews with Customs officials from the EXODUS Command Center; the Office of Foreign Assets Control; the Bureau of Alcohol, Tobacco, Firearms and Explosives; Commerce's BIS; State's Bureau of Economic Affairs Office of Economic Sanctions Policy; and the Department of Justice Office of Internal Security.

CIA OIG Methodology. CIA OIG examined whether CIA has an effective process CIA: (b)(3) that is relevant CIA: (b)(3) CIA: (b)(3) and if the CIA had taken action to implement recommendations identified in prior OIG reports.

The review methodology included interviews with analysts assigned to the CIA Counterterrorist Center and the Weapons Intelligence, Nonproliferation and Arms Control Center. CIA: (b)(3)



U.S. Postal Service OIG Methodology. U.S. Postal Service OIG reviewed the role of the U.S. Postal Service in the enforcement of export controls. Specifically, U.S. Postal Service OIG reviewed the U.S. Postal Service International Mail Manual and Domestic-Originating International Mail Standard Operating Procedures, the Homeland Security Act, the EAA, and EAR.

The review methodology also included interviews with managers of Network Operations, International Affairs, and International Processing/Performance, as well as Inspection Service officials and Customs officials. In addition, the Postal Service OIG visited the Postal Service's International Service Center in Los Angeles, California.

Appendix B. Followup on Prior Interagency Reviews

As amended, Public Law 106-65, National Defense Authorization Act for FY 2000, requires the OIGs to include in their annual report the status or dispositions of recommendations made in earlier reports submitted in accordance with the Act. In the first year of the Act, the OIGs each conducted an audit or review of compliance with the deemed export licensing requirements contained in the EAR and ITAR. The results of the reviews were consolidated in Report No. D-2000-109, "Interagency Review of the Export Licensing Process for Foreign National Visitors," March 2000. In the second year of the Act, the OIGs each conducted an audit or review of the policies and procedures for the development, maintenance, and revision of the Commerce Control List (CCL) and USML. The results of the reviews were consolidated in Report No. D-2001-092, "Interagency Review of the Commerce Control List and U.S. Munitions List," March 2001. In the third year of the Act, the OIGs each conducted an audit or review of Federal automation programs that support the export licensing and enforcement processes. The results of the reviews were consolidated in Report No. D-2002-074, "Interagency Review of Federal Automated Export Licensing Systems," March 2002. Each annual Interagency Review contains the complete text of each OIG's agency-specific report, including recommendations, in appendixes. The following is the status of both the interagency and agency-specific recommendations made by each agency. For specific acronyms pertaining to Appendix B, see the list at the end of this section.

Interagency OIG Recommendations

Status of the OIG Report No. D-2002-074, "Interagency Review of Federal Automated Export Licensing System," March 29, 2002

Recommendations for the Secretaries of Commerce, Defense, Energy, State, and the Treasury

Recommendation A. The Secretary of Commerce, in conjunction with the Secretaries of Defense, Energy, State, and the Treasury, CBP: (b)(7)(E)

[REDACTED]

CBP: (b)(7)(E)


[REDACTED]

Status: Open. BIS originally responded to the OIG recommendation that it believed the appropriate avenue to create a charter would best be accomplished through the U.S Exports (USXPORTS) Executive Steering Committee. Although BIS set a target date of September 2002 for creation of the charter, it recently informed Commerce OIG that it does not believe a charter is necessary given recent coordination efforts. Specifically, BIS stated that it has invited the license referral agencies and other relevant agencies to provide input into the Export Control Automated Support System (ECASS) 2000+ redesign effort and to coordinate these efforts with their own automation initiatives. However, it should be noted that, according to the USXPORTS Program Manager, the Steering Committee has not met since December 2002. While Commerce OIG acknowledges the fact that the export licensing agencies have taken some steps to participate in the ECASS redesign and coordinate with each other to improve the current automated systems that support the dual-use licensing process, none of the agencies have a clear plan of how they will continue to work together.

For instance, Treasury reported that it continues to seek partnerships with the export licensing and enforcement agencies. However, Treasury indicated that given Commerce's lead in establishing accountability for an automated system, it awaits Commerce's direction. As such, the interagency OIG review team reiterates our recommendation for Commerce, Defense, Energy, State, and the Treasury to create a charter, or reach consensus by another appropriate means, outlining the responsibilities of each agency in the design, development, and operation of a dual-use licensing system and how each agency will coordinate its automation efforts. This recommendation remains open.

2. Build on recent interagency efforts to modernize the interagency automated systems for processing export license applications;

Status: Open. Although BIS reported that it would continue to participate in USXPORTS-funded initiatives to help modernize the interagency license processes, as stated above, the Steering committee has not met since December 2002. CBP: (b)(7)(E)



3. Develop a common central repository for all unclassified data records that pertain to the review and approval of an export license; and

Status: Open. BIS reported that through the implementation of the Simplified Network Application Processing/Electronic Support Documentation (SNAP/ESD), there will be a central repository for all supporting documentation for a license application which will be available to all referral agencies to use. However, both Commerce and Defense OIGs believe further steps are needed. Of the three major referral agencies that review BIS' licenses (Defense, Energy, and State), only State has the ability to centrally view all application data, agency comments, and the final disposition on cases that are referred to it. As such, Commerce OIG encourages BIS to work closely with the referral agencies to ensure that ECASS 2000+ has the appropriate access controls, security measures, and interfaces so that the system can be used by all of the agencies, including

Defense, Energy, and CIA, given their individual classification needs. As such, this recommendation remains open.

4. Establish performance goals and metrics to track the progress of the system development efforts and report on the interagency entity's activities on a semiannual basis to the respective Secretaries.

Status: Open. BIS informed Commerce OIG that its Director of Administration meets weekly with BIS' Chief Information Officer and ECASS project manager to discuss the status of all major ECASS modules. Towards that end, the ECASS project team has prepared individual project plans to track all activities associated with each module. BIS also reported that the Director of Administration provides regular updates to both the Deputy Under Secretary and the Under Secretary on system redesign activities. Furthermore, BIS reported that it does not believe sending a report to the Secretary of Commerce will achieve the results originally intended by the interagency OIG review team. While Commerce OIG indicated it was pleased that BIS is tracking the progress of its system development efforts, it is concerned that this approach involves only one of the six federal agencies involved in this interagency export licensing and enforcement process and, as such, does not meet the intent of our recommendation. This recommendation remains open.

Recommendation for the Secretary of State

Recommendation B. The Secretary of State develop a memorandum of understanding with the Secretaries of Defense, Energy, and the Treasury that will help ensure that Federal automated munitions export licensing systems are developed, integrated, and modernized without unnecessary duplication. The memorandum of understanding should outline the responsibilities of each agency in the design, development, and operation of a munitions licensing system and how each agency will coordinate its automation efforts. The memorandum of understanding should also identify an organizational structure, such as an interagency group or steering committee, to oversee the systems development effort.

Status: Open. State OIG indicated that this recommendation will remain open until a memorandum of understanding is agreed upon and signed by the Office of the Assistant Secretary for Political-Military Affairs and Defense, Energy, and Treasury officials regarding the level of protection needed for the pilot system, licensing systems modernization is implemented, and projected information security controls, systems, certifications, and plans are in place. Customs is the enforcement arm for State's munitions export controls and shares responsibility with Commerce for dual-use export control enforcement. Customs continues to seek partnerships with other Federal agencies. However, State has the lead in initiating a memorandum that outlines the responsibilities of each agency for the development and operation of a munitions licensing system and how each agency will coordinate its automation efforts. Therefore, Customs awaits direction from State.

Recommendation for the Secretary of Defense

Recommendation C:

1. Continue to work with Commerce, Energy, and State to improve and better integrate Defense's role in the review and processing of dual-use and munitions export licenses.

Status: Open. Although Defense did not respond or concur with the recommendation, the Acting Deputy Under Secretary of Defense (Policy Integration)²¹ stated that the recommendation was contrary to the precepts of both the Clinger-Cohen Act and applicable Defense regulations. Additionally, the Deputy Under Secretary of Defense believed that implementation of the recommendation will result in the U.S. Exports program losing the opportunity to leverage its accomplishments into future interagency cooperation. The Interagency OIGs responded by stating that the intent of those recommendations is not to end the cooperation between Commerce, Defense, and State, but rather to ensure Defense resources are focused on resolving export license application review process inefficiencies. Defense OIG requested that Defense provide comments to the recommendations. However, on March 18, 2003, the USXPORTS Program Management Office indicated that numerous phone calls were initiated to both Commerce and State in an effort to improve the electronic interfaces, both current and future. While no major impediments exist with Commerce from an automation perspective, State's lack of automation continues to be the greatest risk factor for improving the export license review process.

2. Redirect the primary focus of the U.S. Export Systems Interagency Program Management Office²² to automating, integrating, and modernizing Defense's processes for disseminating and reviewing export license applications and associated technical documentation referred to Defense by Commerce and State.

Status: Open. On November 25, 2002, the Deputy Under Secretary of Defense (Technology Security Policy and Counterproliferation) sent a letter to senior officials of the Departments of Army, Navy, and Air Force, ensuring them that the automation needs for electronic processes and for practical user requirements were being met. Additionally, the Deputy Under Secretary's staff had been discussing the potential design architecture that will support the Defense electronic export license system. Those discussions led to the groundwork for the next phase of baseline system design. The Deputy Under Secretary indicated that to get to the next step and process license requests, all independent organizational systems in use today will need to transition to USXPORTS. That strategy is required to support a single Defense electronic export license and review system. The USXPORTS Interagency Program Management Office proposed milestones for accomplishing those tasks are as follows: (1) license process conceptual

²¹Deputy Under Secretary of Defense (Policy Integration) was renamed Deputy Under Secretary of Defense (Policy Support) on March 12, 2002.

²²In May 2000, Defense announced the start of a new interagency automation effort designed to improve the U.S. Government's export license review process. The USXPORTS Interagency Program Management Office was established to oversee the initiative.

model sign off—December 2002 (no additional status was available); (2) full design and development of USXPORTS—start December 2002 (no additional status was provided); (3) testable USXPORTS Enterprise system—June 2003; data migration from Technology Protection System to USXPORTS—starts September 2003; and USXPORTS Enterprise system deployment—December 2003.

Department of Commerce Recommendations²³

Status of the Commerce OIG Report No. IPE-14270, “BXA [Bureau of Export Administration] Needs to Strengthen its ECASS Modernization Efforts to Ensure Long-Term Success of the Project,” February 2002

Recommendations for the Bureau of Industry and Security

Recommendation 1. Reevaluate and determine, as soon as possible, whether any of the proposed changes outlined in BIS’ 1998 business process reengineering, the USXPORTS business process reengineering, as well as BIS’ August 2001 internal licensing task force report, should be factored into the design and requirements for ECASS 2000+.

Status: Open. BIS has not completed its review of the changes outlined in the various business process reengineering studies or its internal licensing task force report. BIS indicated that the ECASS 2000+ User Group, which meets on a bi-weekly basis, will continue to review the documents and determine whether the proposed changes should be factored into the design and requirements for the ECASS 2000+. BIS anticipates that most of the determinations will be made by spring 2003. Until BIS makes a final determination on all of the proposed changes, this recommendation will remain open.

Recommendation 2. Determine what resources are needed for ECASS 2000+ in the short-term (FYs 2002 and 2003) and long-term (FYs 2004 through 2006), how to secure adequate funding levels, and whether it is necessary to extend the project timeframe.

Status: Open. BIS received an independent cost estimate in June 2002 for the completion of its redesign effort for calendar years 2002 through 2006.²⁴ According to the estimate, completion of the redesign effort will cost BIS \$3.75 million in addition to the \$3.75 million already spent to complete the ECASS 2000+ design. While the cost estimate does not include security costs and is based on certain system enhancements and assumptions that may possibly change, we believe that BIS has adequately identified its overall potential costs for ECASS 2000+ (see Recommendation 4 below for more information on the ECASS 2000+ security costs). However, at our suggestion, BIS recently provided an independent cost estimate to Commerce’s budget office. As such, while the BIS actions partially meet the intent of our recommendation, until Commerce agrees with the BIS analysis that additional funding is needed to complete the ECASS 2000+ and BIS has a plan to secure the funding, this recommendation will remain open.

²³Status of Commerce OIG recommendations is as of September 30, 2002.

²⁴While BIS anticipates that ECASS 2000+ will be completed by September 2005, the transition period from ECASS to ECASS 2000+ is expected to take until spring 2006.

Recommendation 3. Ensure that appropriate users, including those from referral agencies, validate the systems requirements for the licensing subsystem.

Status: Open. To date, BIS has only held user meetings for BIS components and Defense on the Simplified Network Application Processing and Electronic Support Documentation system project. However, BIS informed us that it intends to invite representatives from the referral agencies to evaluate other system component requirements (for example, licensing subsystem) when the time is appropriate. Finally, BIS has documented and is able to track its validated systems requirements using commercial on-line tracking software. While BIS has obtained valuable initial input from BIS users, this recommendation will remain open until BIS has invited users from all of the referral agencies to participate in validating systems requirements for the licensing subsystem.

Recommendation 4. Document security requirements as soon as possible and determine how to fund them, including whether BIS should reallocate existing resources or make them a high funding priority.

Status: Open. BIS prepared its security requirements for ECASS 2000+ and identified the cost of the overall system requirements through its recently prepared independent cost estimate. However, we are concerned that BIS' independent cost estimate does not specifically include or document the planned costs for its security requirements (for example, Public Key Infrastructure). Until BIS determines the actual security costs for ECASS 2000+ and provides adequate funding, this recommendation will remain open.

Recommendation 5. Convene a meeting periodically of BIS senior managers, including the Chief Information Officer, to discuss the ECASS 2000+ development efforts, and any anticipated delays or major problems with the project.

Status: Closed. BIS' Information Technology (IT) Steering Committee, which is chaired by the Deputy Under Secretary and comprised of BIS senior managers including the Chief Information Officer, has held two meetings since issuance of our final report. In addition, the Chief Information Officer attends the Under Secretary's weekly senior staff meeting and the ECASS 2000+ project manager briefs the Under Secretary on the status of the project on a monthly basis. BIS' actions meet the intent of our recommendation.

Recommendation 6. Implement the ECASS 2000+ configuration management process during the second quarter of FY 2002.

Status: Closed. BIS implemented its configuration management process in February 2002 using commercial software, which manages BIS' configuration management process in an on-line environment. BIS' action meets the intent of our recommendation.

Recommendation 7. Implement the ECASS 2000+ risk management process during the second quarter of FY 2002.

Status: Closed. BIS implemented its risk management process in February 2002 using commercial software, which manages the BIS' risk management process in an on-line environment. BIS' action meets the intent of our recommendation.

Recommendation 8. Ensure that the ECASS 2000+ project team completes the necessary software acquisition training during the second quarter of FY 2002.

Status: Closed. BIS' ECASS 2000+ team members completed software acquisition training in November 2001. We believe that this action meets the intent of our recommendation.

Recommendation 9. Revise and approve the project management plan during the second quarter of FY 2002.

Status: Open. The ECASS 2000+ project manager completed the project management plan in August 2002. While the plan documents all of the tasks that must be completed for ECASS 2000+ to be implemented in FY 2005, we are concerned that the planned milestones could still change because BIS management has not approved the plan. Until BIS management approves the plan, this recommendation will remain open.

Recommendation 10. Complete the target architecture and select a location to house BIS' new export licensing automation system during the second quarter of FY 2002.

Status: Open. BIS informed us that it has not completed its target architecture or determined where to house its new system. BIS is attempting to complete its target architecture by the end of September 2002. With regard to the location of its new system, BIS plans to outsource an analysis of potential data centers and choose a location sometime during calendar year 2003. Until the target architecture is completed and a decision made on the location of the new system, this recommendation will remain open.

Recommendation 11. Explore whether Defense could use the ECASS 2000+ licensing subsystem for its export licensing needs.

Status: Open. Prior to March 2002 and at the time we were completing our ECASS 2000+ review, Defense was leaning toward developing an unclassified system for all dual-use license application data that is primarily unclassified. This proposal to move to an unclassified system was based, in part, on the results of a security review that concluded that Defense could migrate its dual-use licensing data to an unclassified environment. However, BIS never fully engaged Defense in discussions about the possibility of it using ECASS 2000+, although BIS indicated in its response to our report that BIS would continue to share its development efforts with Defense. Defense has now decided to retain its classified licensing system, which utilizes a different server platform than does the ECASS 2000+ redesign. Given that decision, we believe that BIS should still

engage Defense in a discussion about the use of ECASS 2000+ and its reasons for wanting to keep unclassified data in a classified system and what, if any, implications this action may have on BIS maintaining this same type of unclassified data in an unclassified system. Until BIS senior managers discuss this matter with Defense, this recommendation will remain open.

Recommendation 12. Work with the dual-use export licensing agencies to develop a central data repository for all data records pertaining to an export license reviewed by these agencies. The repository should have appropriate access controls while also allowing the agencies to maintain control of their respective databases.

Status: Open. BIS contends that ECASS (and the new ECASS 2000+) is a central repository but due to different classification schemes, certain agencies do not choose to directly access ECASS. However, BIS informed us that it will continue to work with its interagency partners to improve its system at the appropriate time. While we are encouraged by Commerce's and Defense's efforts to jointly create the Simplified Network Application Processing/Electronic Support Documentation system, which will essentially be a repository for all supporting documentation for a license application and will be available to all referral agencies to use, we believe further steps are needed. Of the three major referral agencies (Defense, Energy, and State), only State now has the ability to centrally view all application data, agency comments, and the final disposition on cases that are referred to it. As such, we encourage BIS to work closely with the referral agencies to ensure ECASS 2000+ has the appropriate access controls, security measures, and interfaces so that the system can be used by all of the agencies, including Defense, Energy, and the CIA, given their individual classification needs. Until the above stated actions are taken on this matter, this recommendation will remain open.

Recommendation 13. Develop a written agreement between BIS and the license referral agencies, including Defense, Energy, State, the Treasury, and CIA, outlining the responsibilities of each party involved in this effort and how best to coordinate the ECASS 2000+ redesign effort with each agency's automation initiatives.

Status: Open. While BIS and USXPORTS informed us they concur with this recommendation, a written agreement has not been drafted between the license referral agencies. As such, this recommendation will remain open until a written agreement has been drafted and approved by BIS and all of the license referral agencies.

Status of the Commerce OIG Report No. IPE-13744, “Management of the Commerce Control List and Related Processes Should Be Improved,” March 2001

Recommendations for the Bureau of Industry and Security

Recommendation 1. Review BIS’ internal clearance process and procedures for implementing agreed-upon multilateral changes to the CCL and work with the other licensing agencies, including Defense, Energy, and State, to determine whether the current process for updating the CCL can be adjusted in order to publish regulations more expeditiously. In addition, immediately implement the regulatory changes resulting from the May 1999 Nuclear Suppliers Group plenary session and the October 1999 Missile Technology Control Regime plenary session.

Status: Open. BIS informed us that it completed its internal evaluation of the regulatory review process in the fall 2001. As a result of that study, BIS is now using its internal tracking database to better track regulations still under internal review. For those regulations that have been referred out for interagency review, BIS informed us that they send follow-up memorandums to the agencies once the response becomes overdue. Overall, BIS believes that these processes have expedited the review of regulation changes. In addition, BIS informed us that it recently posted two vacancy announcements for the regulatory office, which they anticipate will further expedite formulation and review of regulatory changes within BIS.

With regard to the May 1999 Nuclear Suppliers Group regulatory changes, the final rule was published in the August 2002 *Federal Register*. However, while the draft regulation implementing the October 1999 Missile Technology Control Regime plenary regulation changes was sent out for interagency review on August 9, 2001, BIS informed us that Defense is undertaking a second review of the regulation (Energy and State have cleared the regulation). While BIS’ actions partially meet the intent of our recommendation, this recommendation will remain open until BIS publishes the 1999 Missile Technology Control Regime regulatory changes in the *Federal Register*.

Recommendation 2. In conjunction with Defense and State, review the national security controlled items that have been decontrolled by the Wassenaar Arrangement to determine (a) whether the national security controls for these items should be removed and (b) whether these items should continue to be controlled for foreign policy reasons under the CCL.

Status: Open. BIS informed us that it sent a memorandum, dated July 3, 2002, to the other licensing agencies expressing its view that the four items we identified as being subject to unilateral national security controls are indeed unilaterally controlled and, as such, should only be controlled for foreign policy (antiterrorism) reasons. While BIS indicated that there have been discussions about this matter among the referral agencies, BIS has not received official responses back from the agencies. Until a decision has been reached about these items, this recommendation will remain open.

Recommendation 3. Convene a working group of business and government representatives, under the auspices of the Regulations and Procedures Technical Advisory Committee, to improve the user-friendliness of the CCL. In addition, work with State to (1) eliminate the current overlap of items and make sure that it is very clear on which list an item falls, and (2) create a user-friendly consolidated index of the items on the CCL and USML. To ensure that this happens, work with the applicable congressional committees, that are considering new legislation for dual-use exports, to ensure that any new EAA or similar legislation includes a requirement that the agencies eliminate the overlap and create such an index for both the CCL and USML. Finally, ensure that the annual scrubs of the CCL also take into account any corrections or changes that would help to make the CCL easier for exporters to use.

Status: Open. The Regulations and Procedures Technical Advisory Committee presented BIS with its findings on how to improve the CCL in November 2001. BIS indicated that it is still reviewing the document, but believes the study contains several valid suggestions that it will implement. With regard to our recommendation that BIS work with State to eliminate the overlap of items on both the CCL and USML, BIS indicated that as a part of the five-part “scrub” of USML under the Defense Trade Security Initiative Number 17, review of categories I, V, XIV, and XVI from year one is complete. In addition, review of categories II, III, and XVIII from year two are also complete. The categories currently under review include categories VIII (remaining from year one) VI, XX, XV, and XI, and XII. However, while one of the goals of this initiative is identification of USML items that are more appropriately controlled by the CCL, the initiative does not specifically address the overlap problem we identified. Therefore, relying on the Defense effort will not resolve the overlap issue.

In addition, BIS does not agree with our recommendation to create a consolidated index. Again, to encourage greater compliance with U.S. export control laws, BIS should take the initiative to make the CCL as user-friendly as possible. As pointed out in our report, the CCL can be confusing for exporters and they may make errors in determining whether the CCL covers their item. As a result, the exporters may not apply for a license when one is required. Thus, we urge BIS to begin work with State immediately on the index and to eliminate the overlap. Overall, BIS’ actions taken to date do not meet the intent of our recommendation.

Recommendation 4. Review Export Administration priorities and staffing levels and make adjustments to improve BIS’ timeliness on commodity classification (CCATS) requests.

Status: Open. Although section 10(l)(1) of the EAA specifies that BIS has 10 working days to provide an exporter with a commodity classification, BIS reported that the average number of days to process CCATS in FY 2001 was 48 days compared to 50 days in FY 2000. However, the average number of days to process CCATS in FY 2002, as of August 2002, actually increased to 55 days. The Deputy Assistant Secretary for Export Administration informed us that the CCATS issue is a high priority for Export Administration and as such they anticipate hiring additional technical personnel in FY 2003 to improve the timeliness of commodity classification requests, among other activities. We

verified that BIS requested additional funding for hiring technical personnel in its 2003 budget requests. While BIS' actions partially meet the intent of our recommendation, this recommendation will remain open until BIS implements the necessary actions to improve its timeliness on CCATS.

Recommendation 5. Program ECASS to allow for the “hold without action” feature to help Export Administration managers keep better track of licensing officers’ performance on CCATS.

Status: Closed. BIS informed us that it incorporated this feature into the current ECASS in May 2002. This action meets the intent of our recommendation.

Recommendation 6. Develop policies and procedures for the intra-agency review of CCATS.

Status: Closed. In its July 2001 action plan, BIS stated that it does not believe that developing additional policies and procedures for intra-BIS referral of commodity classifications is necessary. However, on June 4, 2001, BIS' Director of Exporter Services sent an e-mail message to all Export Administration Office Directors instructing them to remind licensing officers that if they need to seek advice about a commodity classification from another office or were requested to provide input on a commodity classification to another division, they should do so promptly and complete the action within 3 working days. BIS' action meets the intent of our recommendation.

Recommendation 7. Request that the National Security Council (NSC) form a working group (including Commerce, Defense and State) to (a) review the 1996 CCATS guidance, (b) revise it if necessary, and (c) develop specific criteria and procedures to ensure that the referral of munitions-related commodity classifications to Defense and State is handled in a timely, transparent, and appropriate manner by all agencies involved.

Status: Open. BIS recently informed us that it plans to work with the NSC and the other agencies to review the 1996 CCATS guidance once the night vision jurisdiction issue is resolved (see Recommendation 13 below). It should be noted that one of the former proposed bills for a new EAA (S. 149), which was supported by the current Administration, would require Commerce, by law for the first time, to notify Defense of all commodity classification requests it receives. As such, BIS informed us that the Administration has reached internal agreement on the principles that would govern Defense's review of commodity classification requests once a new EAA is passed. We are pleased that high-level discussions about the review of commodity classifications are taking place. As such, BIS' actions partially meet the intent of our recommendation. This recommendation will remain open until the NSC/Commerce/Defense/State review of the 1996 CCATS guidance is completed and specific criteria and procedures are developed to ensure that the referral of munitions-related commodity classifications to Defense and State is handled in a timely, transparent, and appropriate manner by all agencies involved.

Recommendation 8. Provide State with a copy of the final determinations for any CCATS it reviews.

Status: Open. BIS is not providing State with copies of the final determinations for CCATS it reviews. Specifically, BIS indicated that it was not practical to do so under the current export licensing system. According to BIS, its new ECASS 2000+ will have an automatic tickler requirement that will notify BIS when a CCATS request was reviewed by State. This feature will enable BIS to better identify those CCATS reviewed by State. BIS needs to use this new system capability to provide the final CCATS determinations to State. This will help make the CCATS process more transparent. Until the CCATS module of ECASS 2000+ is operational and BIS provides State copies of the final determinations for CCATS that it reviews, this recommendation will remain open.

Recommendation 9. Review Export Administration priorities and staffing levels, as appropriate, and make adjustments to improve BIS' timeliness on commodity jurisdiction (CJ) requests.

Status: Open. BIS reported that the average number of days to process CJs during FY 2002, to date, was 116 days compared to 182 days during FY 2000. While BIS' CJ processing time has decreased by approximately 35 percent, the 1996 NSC guidance requires that the entire CJ determination process—from the time State receives a complete CJ determination request, refers the request to Commerce and Defense to when a reply is provided to the exporter—take 95 days. Like the CCATS issue, the Deputy Assistant Secretary for Export Administration informed us that the CJ issue is a priority for Export Administration and hopes that the additional technical personnel BIS anticipates hiring in early FY 2003 will help improve the timeliness of CJ requests. While BIS' actions partially meet the intent of our recommendation, this recommendation will remain open until BIS implements the necessary actions that will further improve its timeliness on CJs to be in compliance with the NSC guidelines or works with State to obtain a revision in the 95-day deadline that would enable BIS to be in compliance with the new deadline.

Recommendation 10. Work with State's DDTC and Defense, or include as part of the current system redesign efforts, an automated system for referring and processing CJ cases, similar to the current automated licensing system.

Status: Open. BIS agreed to work with State and Defense to have this issue addressed as part of Defense's USXPORTS initiative. To that end, the Assistant Secretary for Export Administration sent a memorandum to State's Assistant Secretary for the Bureau of Political-Military Affairs encouraging State to improve the CJ process through automation. The memorandum also offers technical or other support to State on that endeavor. While BIS pointed out to us that, ultimately, State has to agree to electronic processing of CJ requests, our understanding is that at the January 2002 USXPORTS Steering Committee meeting, State indicated it was committed to improving the electronic processes for munitions export licenses. Until a definitive decision to automate the CJ process is made, this recommendation will remain open.

Recommendation 11. Request that DDTC consult with BIS and Defense on all CJ requests and cease its practice of making some CJ determinations without first consulting with those agencies, as required by the 1996 NSC guidance.

Status: Closed. BIS stated that it discussed this issue with State and believes this matter is resolved. Specifically, BIS informed us that it has had no indication of any problems in the area since issuance of our report. BIS' action meets the intent of our recommendation.

Recommendation 12. Request that the NSC provide guidance on how DDTC, Defense, and BIS should process government jurisdictions, similar to the guidance it issued for the CJ process.

Status: Closed. BIS informed us that State now treats all Government jurisdictions as CJs. As a result, BIS is satisfied with this action and does not believe the matter needs to be referred to the NSC for resolution. This action meets the intent of our recommendation.

Recommendation 13. Submit a formal written request to the new head of the NSC asking for early resolution of the jurisdictional issues regarding night vision equipment and technology.

Status: Open. BIS has not formally requested that the NSC resolve the jurisdictional issues regarding night vision equipment and technology since issuance of our March 2001 report. However, as a part of the Defense Trade Security Initiative Number 17 effort, Defense provided the interagency licensing community with its proposed changes regarding the USML category that encompasses night vision equipment and technology. BIS is currently formulating its position on Defense's proposals and expects to address the matter at the October 2002 USML review meeting, which the NSC chairs. Until the jurisdictional issue is resolved, this recommendation will remain open.

Recommendation 14. Submit a formal written request to the new head of the NSC asking for early resolution of the jurisdictional issues regarding the 16 space-qualified items.

Status: Closed. The NSC, Commerce, Defense, and State recently completed a review of licensing jurisdiction for space-qualified items. The Departments posted charts on their respective Web sites that detail the resolution of this issue. According to BIS, each agency will publish rules shortly in the *Federal Register* amending their regulations, where appropriate, and specifying the relevant details and technical parameters associated with export control of the items. Of the 16 space-qualified items in dispute, 6 were determined to fall strictly under the USML; 4 were determined to fall strictly under the CCL; and 4 were determined to fall under both the CCL and the USML depending on certain technical parameters. The remaining two categories were decontrolled by the Wassenaar Arrangement in December 1998. The deletions were made to the CCL in mid-1999, but new categories were created to unilaterally control these items on the CCL for anti-terrorism reasons. BIS' actions meet the intent of our recommendation.

**Status of the Commerce OIG Report No. IPE-12454-1,
“Improvements Are Needed in Programs Designed to Protect
Against the Transfer of Sensitive Technologies to Countries of
Concern,” March 2000**

Recommendations for the Bureau of Industry and Security

Recommendation 1. Aggressively pursue an outreach program to high technology companies and industry associations explaining and seeking compliance with the deemed export control requirements.

Status: Closed. Within BIS, the Office of Exporter Services has the lead responsibility for educating the business community and U.S. Government agencies about the “deemed export” provisions of the EAR. BIS informed us that the Office of Exporter Services included the subject of deemed exports in its 2-day export control seminars, which were held monthly in cities across the United States. Plenary sessions were also conducted on deemed exports at the annual BIS Update Conference in July 2000, which BIS estimated included 800 industry representatives. In addition, BIS has kept industry informed of deemed exports through its various Technical Advisory Committee meetings. Furthermore, we noted that BIS senior managers periodically include information on deemed exports in speeches given at industry events.

In addition to the outreach activities, the Office of Export Enforcement, through its Project Outreach program, meets with employees of businesses, officials of other Federal agencies, and university officials to make them aware of their export control compliance responsibilities under the EAR. According to Office of Export Enforcement officials, the guidance includes making the individuals aware of the deemed export provisions of the EAR.

During FY 2000, the Office of Export Enforcement reported that it conducted 1,033 Project Outreach visits and 60 public relations appearances (such as trade association meetings or Office of Export Enforcement Business Executive’s Enforcement Training meetings). The Office of Export Enforcement officials informed us that because many of the dual-use technologies and commodities controlled under the EAR are high technology, a significant proportion of the Office of Export Enforcement contacts with the business community are with high-technology firms. In addition, Office of Export Enforcement special agents have visited numerous research institutes and universities that employ or sponsor foreign nationals. BIS’ actions meet the intent of our recommendation.

Recommendation 2. Develop a link on BIS’ main Internet Web site specifically dedicated to deemed exports as was done for the Chemical Weapons program.

Status: Closed. On March 15, 2000, a deemed export Web site link was established on the main BIS Web site. The Web site included a comprehensive list of questions and answers that covered what the deemed export rule is, who is considered a foreign national, what the licensing requirements for foreign

nationals are, and what technologies are subject to control. BIS' actions meet the intent of our recommendation.

Recommendation 3. Expand outreach efforts with Federal agencies (including Commerce, Defense, Energy, and Transportation, and the National Aeronautics and Space Administration) to ensure that these agencies fully understand the deemed export requirements and to help them determine whether foreign visitors at their facilities and/or laboratories require a deemed export license. At a minimum, BIS should:

(a) Respond to the Energy's November 1999 request to review and concur with the informal deemed export guidance that BIS provided to Energy officials at a June 1999 meeting.

Status: Closed. Although BIS has still not formally responded to the Energy's November 1999 request to review and concur with the informal deemed export guidance that BIS provided to Energy officials at a June 1999 meeting, the Commerce OIG has acknowledged that BIS is now engaged in a continuing dialogue with Energy on various export control issues, including deemed export controls. BIS' actions meet the intent of our recommendation.

(b) Follow up with the Director of the National Institute of Standards and Technology (NIST) on the three cases we identified to determine whether deemed export licenses should have been obtained and assist the NIST in developing an export compliance program.

Status: Closed. According to BIS, licensing officials held consultations with NIST and determined that the three cases in question were instances of "fundamental research" and, as such, no deemed export license was required. BIS actions meet the intent of our recommendation.

(c) Engage in discussions with the National Oceanic and Atmospheric Administration (NOAA), including the Assistant Administrators of its line offices and in particular the National Environmental Satellite, Data, and Information Service, to discuss deemed export regulations and their potential applicability to the NOAA.

Status: Open. Although BIS' July 2001 action plan indicated that BIS would follow-up on its May 31, 2001, memorandum to NOAA's Acting Administrator in which BIS offered to brief NOAA personnel on deemed exports, no additional action has been taken. While the May 2001 memorandum partially meets the intent of our recommendation, this recommendation will remain open until BIS engages in discussions with NOAA management on the deemed export regulations and their potential applicability to NOAA.

(d) Meet with Department of Transportation officials to ensure their understanding and compliance with deemed export license requirements.

Status: Closed. According to BIS, representatives from Export Administration and Office of Chief Counsel met with legal staff from the Department of Transportation's Federal Aviation Administration in June 2000. BIS informed us

that they provided an extensive briefing on the regulatory and procedural requirements of the deemed export program. In addition to the Federal Aviation Administration, BIS reported that it contacted officials at the Department of Transportation and provided them with copies of the regulation and Web site material. BIS' actions meet the intent of our recommendation.

Despite a lack of action on some of our recommendations, BIS appears to have made a more concerted efforts since issuance of our March 2000 report to ensure that other Federal agencies have a clear and uniform understanding of the licensing requirements for transfer of controlled technology to foreign nationals. For example, BIS reported that the Office of Export Enforcement conducted 350 liaison meetings with other Federal agencies during FY 2000. BIS also informed us that it includes its sister agencies as both guests and instructors in seminar programs in an effort to educate agency officials on BIS' responsibilities in the export control arena, including deemed exports. Furthermore, BIS provided us with the following information concerning some of its increased outreach activities to other Federal agencies regarding deemed exports.

- **Energy.** In April 2000, BIS provided speakers and training material on the subject of deemed exports at Energy's Export Control Coordinators Organization conference. The Export Control Coordinators Office is the coordinating body for those who deal with export controls at the various Energy laboratories. Furthermore, as a result of a recent administrative settlement with Energy's national laboratories related to alleged violations of the EAR, BIS is currently hosting officials from Energy. During their stay in BIS, Energy personnel gain comprehensive insight into BIS' priorities regarding licensing and enforcement concerns. Furthermore, in March 2001, the Office of Export Enforcement hosted an Export Control Seminar for Energy personnel at the Los Alamos, New Mexico, and Lawrence Livermore, California, national laboratories. In addition to traditional export control concerns, the Director of the Office of Export Enforcement delivered a presentation on compliance with deemed exports to Energy personnel. Since March 2000, Office of Export Enforcement special agents have also participated in Project Outreach visits and BIS Export Seminars at Energy facilities that include the National Renewable Energy Laboratory, the Thomas Jefferson National Accelerator Laboratory, and the Oak Ridge National Laboratory.
- **Defense.** In October 2000, the Office of Export Enforcement made a presentation at the Defense Logistics Agency annual agent training in Battle Creek, Michigan, during which both deemed exports and "traditional" export control matters were discussed. The Office of Export Enforcement is also involved in interagency working groups in Milwaukee, Wisconsin, and Detroit, Michigan, which focused on topics such as deemed exports.
- **National Aeronautics and Space Administration.** According to the Office of Export Enforcement, several of the National Aeronautics and Space Administration operating units throughout the United States

have been visited by Office of Export Enforcement special agents in the last 3 years. Specifically, the Office of Export Enforcement reported that it has visited the National Aeronautics and Space Administration's Dryden Flight Research Center, California; Johnson Space Center, Texas; Langley Research Center, Virginia; and Jet Propulsion Laboratory, California. According to the Office of Export Enforcement, these visits focused primarily on the deemed export of technology controlled under the EAR to visiting foreign scientists. The Office of Export Enforcement special agents have also taken part in annual National Aeronautics and Space Administration training at its Ames Research Center, California.

Recommendation 4. Clarify the term “fundamental research” in the deemed export regulations to leave less room for interpretation and confusion on the part of the scientific community.

Status: Closed. In an effort to help clarify the term “fundamental research” used in the deemed export regulation, BIS has provided a “Questions and Answers” supplemental to the deemed export regulations in the EAR (Supplemental No. 1 to Part 734) and posted a deemed export “Question and Answers” link off of its Web site. In addition, BIS includes the subject of deemed exports at its biannual Update Conferences it holds on the east and west coasts as well as through various outreach visits with U.S. businesses. We encourage BIS to continue these efforts to clarify the deemed export regulations, including the fundamental research exemption.

We also encourage BIS to expand its outreach visits to target key research institutes and universities that work with high technology and employ or sponsor foreign nationals to work in their research facilities. BIS' actions and planned activities have met the intent of our recommendation.

Recommendation 5. Work with the NSC to determine what is the intent of the deemed export control policy and to ensure that the implementing regulations are clear in order to lessen the threat of foreign nationals obtaining proscribed sensitive U.S. technology inappropriately.

Status: Open. According to BIS, it has not followed up on its March 2000 letter to the NSC requesting that the council convene a working group of representatives from Commerce, Defense, Energy, Justice, and State, and the Office of Management and Budget to review U.S. policy regarding deemed export technology transfers. However, based on recent discussions with both licensing and enforcement officials, as well as previous discussions with other agency officials, we found that there is still confusion about the exemptions associated with the deemed export control regulations, as stated in the EAR. Specifically, Federal officials, research laboratory personnel, and private companies are all uncertain about which items are and are not subject to the regulations.

We understand that BIS established an internal deemed export task force late in FY 2001 to review the current deemed export control policy and process. While these efforts were put on hold for most of FY 2002, BIS informed us that the Under Secretary recently requested that the task force put together an internal

report assessing whether there is a need for a fundamental change in the deemed export control policy or how to make the current process work. We encourage the task force to address the above issues, including the fundamental research and other exemptions in the deemed export regulation. We look forward to seeing the task force's internal report on deemed export controls when it is completed. Accordingly, this recommendation will remain open.

Recommendation 6. Track the number of visa application cables reviewed by the Director of the Office of Enforcement Analysis' Export License Review and Compliance Division, as well as those that are distributed to the analysts for an in-depth review.

Status: Closed. BIS estimates that the Director of the Office of Enforcement Analysis Export License Review and Compliance Division reviews between 15,000 and 20,000 visa application cables annually. A count of the visa applications that the Director believes need further review by the Office of Enforcement Analysis analysts are recorded on an electronic log, which is updated on a daily or weekly basis, as needed. BIS' actions meet the intent of our recommendation.

Recommendation 7. For the Visa Application Review Program, assess whether the Office of Enforcement Analysis should continue to review the current level of visa application cables.

Status: Closed. According to BIS estimates, the Director of the Office of Enforcement Analysis Export License Review and Compliance Division reviewed between 15,000 and 20,000 of the 47,000 visa application cables received from State's Telecommunications Center in FY 1999. BIS managers reexamined the cable profile for visa application cables to determine whether they could reduce the number of cables reviewed. That review determined that both the numbers and types of cables being reviewed by the Office of Enforcement Analysis is appropriate given current resource levels. Therefore, BIS believes there is no need to decrease the number of visa application cables that it reviews annually. BIS' actions meet the intent of our recommendation.

Recommendation 8. Work with State to have a worldwide cable issued to reiterate the need for complete information in the visa application cables, including specific information for all stops on a visa applicant's proposed trip to the United States.

Status: Closed. In our March 2001 follow-up report, we reported that the Office of Enforcement Analysis sent a letter to State in July 2000, requesting that a worldwide cable be issued reiterating the need for complete information in the visa application cables. However, the Director of the Office of Enforcement Analysis' Export License Review and Compliance Division was not sure whether such a cable was ever issued. While the Office of Enforcement Analysis saw some improvement in the visa application cables, the Director felt that still more information would be helpful. Therefore, we requested that BIS again contact State to put out better guidance on what information is needed in the visa application cables.

On June 25, 2001, the Director of the Office of Enforcement Analysis' Export License Review and Compliance Division met with officials in the visa office at State to discuss the need for additional information in the visa application cables, such as what individuals, companies, or institutions will be visited during each stop listed on the applicant's itinerary. Since the meeting, Office of Enforcement Analysis analysts have noticed an improvement in the information provided on the visa application cables. BIS' actions meet the intent of our recommendation.

Recommendation 9. Supplement the Visa Application Review Program training materials with additional reference information, to include checklists for the review process that are customized to the country of the visitor and type of place (company or Government facility) to be visited in the United States.

Status: Closed. The Director of the Office of Enforcement Analysis Export License Review and Compliance Division created a checklist that identifies which resources are to be checked by the analysts, based on the country of the visitor, and the type of place to be visited in the United States. This checklist was disseminated to the analysts of the Office of Enforcement Analysis in July 2000. In addition, training and informational materials were subjected to a review to ensure continued applicability and usefulness. Finally, the Director of the Export License Review and Compliance Division meets regularly with staff members to ensure that all appropriate resources are being consulted during the review of visa application cables. BIS' actions meet the intent of our recommendation.

Recommendation 10. Change the Office of Enforcement Analysis referral queue in Enforce to permit statistical queries and electronic notification to the responsible agent of a visa referral being made involving an existing case.

Status: Open. A replacement system for Enforce, the Investigative Management System, is expected to be delivered to all Office of Export Enforcement field offices and Export Enforcement headquarters personnel in early FY 2003. According to BIS, the new system will permit statistical queries and electronic notification to the responsible agent of a visa referral being made involving an existing case. The new system will also require that a search be conducted before any new information can be added. For example, if a new visa referral case is to be inputted into the Investigative Management System system, the system will be searched for the name, address, and telephone number. If a match occurs, the system will notify the case agent. A determination will then be made if the visa referral information should be combined under the existing case or should be opened under a new case. While BIS' actions partially meet the intent of our recommendation, this recommendation will remain open until the investigative tracking system and the changes we recommended are fully operational.

Recommendation 11. Designate a point of contact in the Office of Export Enforcement's Intelligence and Field Support Division for receipt and review of all visa referrals and have this point of contact interface on a regular basis with an Office of Enforcement Analysis representative to ensure that visa cases are prepared, reviewed, and referred to the field offices in a timely manner. Assess the effectiveness of this new procedure as part of the periodic assessment of the overall Visa Application Review Program.

Status: Closed. On May 8, 2000, the Assistant Director of the Office of Export Enforcement's Intelligence and Field Support Division was designated as the point of contact in the Office of Export Enforcement for receipt and review of all visa referrals. In addition, a change was made to the Enforce database so that incoming visa referrals from the Office of Enforcement Analysis now appear in the Assistant Director of Intelligence and Field Support Division's "tickler" file, which enhances their visibility and enables the Assistant Director to review and refer the referrals to field offices more quickly. Both the Director of the Office of Enforcement Analysis' Export License Review and Compliance Division and the Assistant Director of the Office of Export Enforcement's Intelligence and Field Support Division have seen a significant improvement in the timeliness of visa application referrals being made to Office of Export Enforcement field offices. BIS has also pledged to review the new procedure as part of the periodic assessment of the overall Visa Application Review Program. BIS' actions meet the intent of our recommendation.

Recommendation 12. Institute a standard procedure for instances when the Office of Export Enforcement field offices uncover potential visa fraud that ensures that all such cases are referred to the appropriate office in State in a timely manner.

Status: Closed. On May 12, 2000, the Office of Export Enforcement sent procedural guidance to its field offices regarding reporting instances of possible visa fraud to State. Under the new procedures, all instances of possible visa fraud identified by Office of Export Enforcement field agents will be forwarded directly to the Office of Enforcement Analysis, with an informational copy provided to the Office of Export Enforcement's Intelligence and Field Support Division at headquarters. Upon receipt of any referrals of possible visa fraud, the Office of Enforcement Analysis immediately sends the information to the appropriate State Office for action. BIS' actions meet the intent of our recommendation.

Recommendation 13. Develop procedures within the Office of Enforcement Analysis to ensure that visa fraud referrals are made to State within the appropriate 10 or 15-working day suspense period.

Status: Closed. On May 12, 2000, the Office of Enforcement Analysis sent guidance to the analysts who review the visa application cables instructing them that if during review of a visa application cable they discover apparent or possible visa fraud, analysts are to report the information to State immediately (via facsimile) and prior to further review or referral elsewhere. According to the Director of the Office of Enforcement Analysis Export License Review and Compliance Division, no referrals for visa fraud have been made since we made this recommendation. BIS' actions meet the intent of our recommendation.

Recommendation 14. Stop making visa application referrals to State involving an entity on the Entity List.

Status: Closed. Effective April 1, 2000, the Office of Enforcement Analysis stopped making visa application referrals to State for entities listed on the BIS Entity List.²⁵ Such referrals are now only made to the Office of Export Enforcement for appropriate action. BIS' actions meet the intent of our recommendation.

Recommendation 15. Assess the Visa Application Review Program periodically, after the refinements we are recommending and others have been implemented, to determine whether the resources dedicated to the program justify the results. To that end, BIS should develop performance measures to help in determining the program's success.

Status: Open. While BIS has not formally assessed the Visa Application Review Program as we recommended, BIS believes that the resources dedicated to the program justify the results. In addition, BIS contends that the importance of the Visa Application Review Program has been highlighted since the September 11, 2001, terrorist attacks on the United States. As such, the Office of Enforcement Analysis is targeting "Project Outreach" opportunities for the Office of Export Enforcement and enforcement leads relating to possible terrorist activities. BIS indicated that the Office of Enforcement Analysis's evaluation and analysis of visa application cable traffic involves preventive enforcement efforts such as recommending denial of certain visas, intelligence gathering, and referral of enforcement leads to the Office of Export Enforcement's field offices for possible investigative case development. For example, according to BIS, in FY 2002 State occasionally declined to issue visas to foreign nationals based on Export Enforcement's recommendation that a potential risk of a transfer of sensitive technology exists. In other cases, Export Enforcement uncovered possible visa fraud on the part of the foreign applicant. These findings were forwarded to State's visa fraud unit for further investigation and action.

Over the next 6 months, BIS reported that it will assess all referral case dispositions, including visa referrals, for FY 1999 through FY 2001 to further measure the referral process success. The assessment will include identification of the criminal and administrative actions and other outcomes, such as the issuance of warning and outreach letters and detentions, and seizures resulting from the Office of Export Enforcement investigations. BIS hopes the assessment will enable the Office of Enforcement Analysis to narrow its focus and fine tune the program to maximize its effectiveness.

While we understand that BIS' managers are convinced of the value of the Visa Application Referral Program, we are taking a closer look at this program as a part of our current review of BIS' export enforcement activities. We still maintain that BIS might be better able to measure the outcome of the visa referrals by creating a new performance measure, such as the number of significant cases resulting from visa referrals. We recognize that cases take a number of years of work before they can be termed "significant," but because

²⁵The BIS Entity List is a published listing of foreign end users involved proliferation activities.

such cases are at the heart of the BIS investigative mission, we believe that determining how many referrals actually end up as significant cases might be a good measure of the program's success. This recommendation will remain open until BIS formally assesses the Visa Application Review Program and determines whether the resources dedicated to the program justify the results.

Recommendation 16. Work with State and other interested agencies to formalize the review of visa applications under the Visa Mantis program in a memorandum of understanding. In addition, encourage State to establish criteria for visa denials and develop a process for feedback so that the participating agencies are kept apprised of the results of their referrals.

Status: Closed. State formalized the review of visa applications under the Visa Mantis program in an August 9, 2000, memorandum of understanding, which does contain criteria for visa denials. However, State has not developed a process for feedback that will keep the participating agencies apprised of the results of the referrals. According to the Director of the Office of Enforcement Analysis Export License Review and Compliance Division, since our report was issued, communication between State and BIS has improved significantly. In addition, meetings are being held more frequently among BIS, State, and other participating agencies. However, BIS would still like to obtain formal feedback on referrals that it makes to State, and has made such a request to State. State has not responded to the BIS request, and that may be because BIS has made just a few visa application referrals to State during last year. Thus, creating a system to provide feedback on the disposition of those few referrals may not be a high priority for State at this time. The State OIG, which made a similar recommendation in its 2000 report, will follow up to determine precisely why State has not implemented the feedback portion of the recommendation. BIS actions meet the intent of our recommendation.

Recommendation 17. Ensure that all future Committee on Foreign Investment in the United States filings, especially those involving countries of concern, are forwarded to both Export Enforcement and Export Administration's appropriate licensing office for review. In addition, make certain that any referral and recommendations are documented in the Committee on Foreign Investment in the United States case file.

Status: Closed. Although it has not issued written procedures for referring Committee on Foreign Investment in the United States cases to Export Enforcement and Export Administration, the BIS Committee on Foreign Investment in the United States database now includes separate line items for "To Export Enforcement" and "Export Control Automated Support System checked," which prompt the analyst entering the data to perform those checks. In addition, since July 2001, the Office of Strategic Industries and Economic Security has performed its own Export Administration checks, because the Committee on Foreign Investment in the United States analyst now has access to ECASS. According to BIS, each Committee on Foreign Investment in the United States file is reviewed by the Director of that office to ensure that the Export Enforcement and ECASS checks are completed. BIS' actions meet the intent of our recommendation.

Recommendation for the National Institute of Standards and Technology

Recommendation 1. Ensure that NIST Cooperative Research and Development Agreements²⁶ or any other agreements that NIST may have with the private sector include a statement specifying its private sector partners' need to comply with export control laws, such as obtaining a deemed export license for their foreign national employees, if applicable, before working on NIST research projects.

Status: Closed. The terms and conditions of the standard NIST Cooperative Research and Development Agreements document were modified to include a clause on the export of technical data. According to NIST, each new Cooperative Research and Development Agreement NIST executed after April 7, 2000, would include the new clause. Any existing Cooperative Research and Development Agreements extended or amended for any reason will also include the clause as part of the new amendment. In addition, NIST is examining other agreements between NIST and the private sector to determine on a case-by-case basis whether those agreements should also contain an export control clause. As a part of this exercise, we encourage NIST to examine existing Cooperative Research and Development Agreements that may not come up for an extension or amendment to determine if they also need to be amended to include the export clause. NIST's actions meet the intent of our recommendation.

Recommendations for the National Institute of Standards and Technology and the National Oceanic and Atmospheric Administration

Recommendation 1. Work with BIS to establish procedures to ensure that technical information or know-how released to foreign nationals is in compliance with Federal export licensing requirements. At a minimum: (a) Develop guidance regarding when a visit, assignment, or collaborative relationship of a foreign national to a NIST or NOAA facility requires a deemed export license; (b) Clearly state policies, procedures, and responsibilities of NIST and NOAA hosts for determining whether a deemed export license is required; (c) Establish a focal point at each appropriate NIST and NOAA research facility to determine whether a deemed export license is required when a foreign national visits the facility; (d) Develop an export control program document containing procedures for determining whether technology or commodities at NIST and NOAA facilities can be exported to foreign countries, with or without a license; and, (e) Mandate training requirements for personnel at NIST and NOAA facilities on the deemed export licensing requirements.

National Institute of Standards and Technology. Status: Closed. In response to our recommendations, NIST established an Export Control Working Group, which includes officials from the major NIST management groups and divisions.

²⁶ A cooperative research and development agreement, or Cooperative Research and Development Agreements, is one means that the U.S. Government uses for technology transfer to the private sector. Cooperative Research and Development Agreements are used when research being conducted jointly by Federal laboratories and non-Federal parties is more likely to result in the development of an invention and would generally increase the possibility that deemed export licenses could be required.

The primary mission of the group is to (1) review current export control policies and procedures and propose improvements where needed, (2) draft written policy guidelines on export controls for NIST personnel, and (3) draft training materials on export controls for NIST personnel. On March 24, 2000, the Working Group had a kick-off meeting, which included a presentation by BIS officials. In May 2000, pending the adoption of formal written procedures, the offices of NIST Counsel and International and Academic Affairs instituted short-term procedures for processing foreign guest workers employed at NIST. Workers coming from organizations on the BIS Entity List or from embargoed countries, regardless of which project they would be participating in at NIST, were to be first vetted through the Office of the NIST Counsel and formal applications for deemed export licenses were to be made when appropriate. According to NIST, it has filed two deemed export license applications with BIS since March 2000. Both applications were returned without action because no license was required.

Subsequently, a June 2000 memorandum from the Director of NIST's Program Office was sent to all the division chiefs informing them of U.S. export control laws and regulations that governed the sharing of information with foreign nationals. The memorandum also requested that each division chief provide the name, country of origin, and detailed description of the research being conducted by each guest worker visiting NIST who comes from one of the countries listed on the restricted countries list contained in the ITAR.²⁷ According to the memorandum, the information is then forwarded to the Office of International and Academic Affairs. Finally, the memorandum designates the Office of the NIST Counsel as the focal point for export control guidance, including questions and clearances.

In August 2000, the Director of NIST sent a memorandum to all NIST employees on the "Do's and Don'ts When Dealing With Intellectual Property, Proprietary Information and Companies." The memorandum is essentially a list of 10 principles to help NIST employees ensure that all their dealings with outside parties are ethical and are in compliance with Federal law, regulation, and policy. Item 6 on the list warns against the disclosure of technical information to non-U.S. citizens and briefly explains the concept of deemed exports.

Finally, since issuance of our March 2000 report, NIST has held three training sessions, primarily geared to NIST personnel involved in the Advanced Technology Program's intramural activities, that include discussions of export control-related issues, including deemed exports. Furthermore, NIST is planning another series of training courses involving general scientific collaborations during the coming year that is also expected to incorporate a discussion of export control-related issues. NIST actions meet the intent of our recommendations.

²⁷The ITAR list includes BIS embargoed countries. When the Commerce OIG questioned NIST as to why it used the ITAR list as a baseline for its division chiefs to follow, NIST informed it that the original intent of the memorandum was for NIST to identify research being conducted by foreign guest workers from countries of concern, such as those from China, India, and Pakistan. However, NIST pointed out that it is aware of the BIS Entity List and Denied Persons List as indicated by the fact that it applied for two deemed export license applications for individuals coming from an entity that appears on the BIS Entity List. NIST stated that any future instruction on this issue will include references to not only the ITAR-restricted list, but also the BIS Entity and Denied Persons Lists.

National Oceanic and Atmospheric Administration. Status: Open. While we have reported that the National Environmental Satellite, Data, and Information Service actions to improve compliance with export controls in general, and deemed export controls in particular, are meeting the intent of our recommendations, we are not convinced that this holds true for NOAA's other line offices. Specifically, in its March 18, 2002, action plan, NOAA indicated that the National Ocean Service, National Weather Service, Office of Oceanic and Atmospheric Research, and the National Marine Fisheries Service reviewed our report and determined that the recommendations did not apply to their programs. However, given the complexity of deemed export controls, we are concerned that these line offices based their decisions on the information found in our report and did not confer with BIS on this matter. As such, we again urge NOAA to respond to BIS' offer of May 31, 2001, (as discussed in recommendation 3(c)) to discuss this issue to determine whether additional efforts need to be taken by the NOAA line offices to ensure that technical information or know-how released to foreign nationals is in compliance with Federal export licensing requirements. As a result, NOAA's actions have not fully met the intent of our recommendation.

Recommendation for the International Trade Administration and the Bureau of Industry and Security

Recommendation 1. Determine whether the International Trade Administration or BIS is the appropriate Commerce organization to take the lead on Committee on Foreign Investment in the United States matters.

Status: Closed. BIS and the International Trade Administration agree that the Commerce responsibility for coordinating Committee on Foreign Investment in the United States matters should continue to reside in the International Trade Administration because neither party believes that a transfer of administrative responsibilities would enhance the effectiveness of Commerce's Committee on Foreign Investment in the United States review process. However, neither agency could provide a justification as to why the International Trade Administration is the more appropriate Commerce organization to take the lead on the Committee. Regardless, the two bureaus agreed to work closely together, as well as with other interested departmental units, to ensure that all Committee on Foreign Investment in the United States cases are reviewed thoroughly. BIS and the International Trade Administration actions meet the intent of our recommendation.

Department of Defense Recommendations

Status of the Inspector General of the Department of Defense (IG DoD), Report No. D-2002-039, "Automation of the DoD Export License Application Review Process," January 15, 2002

Recommendation for the Deputy Under Secretary of Defense (Policy Support)

Recommendation 1. In accordance with Office of Management and Budget Memorandum M-00-10, "OMB [Office of Management and Budget] Procedures and Guidance on Implementing the Government Paperwork Elimination Act," assess whether to accept export license applications and supporting documents in electronic form, assess whether to engage in electronic transactions to support the export licensing process, and determine the information security practices and management controls that are required to ensure information security.

Status: Open. The Deputy Under Secretary of Defense (Policy Support) indicated that the USXPORTS Interagency Program Management Office is under the oversight of the Office of the Secretary of Defense, Command, Control, Communications and Intelligence for compliance with Defense's Acquisition Directive 5000.2R, Clinger-Cohen Act, and the Government Paperwork Elimination Act. USXPORTS Interagency Program Management Office reports monthly to an Executive Steering Committee chaired by the Deputy Under Secretary of Defense, Technology Security Policy and Counter-Proliferation with membership to include Commerce, State, the Military Departments and the National Security Agency. This forum provides the management guidance and oversight for ensuring best practices for information security among USXPORTS Interagency Program Management Office Federal partners and within Defense for the electronic export license process. The U.S. Air Force Acquisition Executive in accordance with Defense's Chief of Information Office mandate²⁸ now provides program Milestone Decision Authority and oversight of U.S. Exports Interagency Program Management Office. As a result, the steering committee has approved an electronic dissemination strategy for export licensing.

Recommendation 2. Based on the results of the assessments and security determination performed in response to Recommendation 1., develop a plan to automate the Defense export license dissemination and review process to ensure that the technical experts within Military Departments and Defense Components have access to the system.

Status: Open. The Deputy Under Secretary of Defense (Policy Support) stated that agreements have been reached and codified in writing through the Executive Steering Committee for an electronic dissemination strategy with Commerce that will allow subject matter experts to have access to export license information.

²⁸Memorandum from Defense, Assistant Secretary of Defense to Assistant Secretary of the Air Force dated February 3, 2003.

Negotiations are in progress with State. USXPORTS Interagency Program Management Office is building to Commerce strategy. Limited production for dual-use license review improvements is expected by June 2003.

Recommendation 3. Perform an analysis of multiple concepts to determine whether existing automation options can be used in developing a Defense-wide automated system for the dissemination and review of export licenses.

Status: Closed. The Deputy Under Secretary of Defense (Policy Support) stated that electronic dissemination “rule-sets” were reviewed extensively by the steering committee. A single approach was agreed upon and approved by the Deputy Under Secretary of Defense, Technology Security Policy and Counter-Proliferation and the Defense Technology Security Administration licensing officials. Those actions meet the intent of our recommendation.

Recommendation 4. Verify that the planned automation of the DoD export license review process will have connectivity with the automation efforts of the USXPORTS Interagency Program Management Office.

Status: Closed. The Deputy Under Secretary of Defense (Policy Support) stated that the Office of the Deputy Under Secretary of Defense for Policy Support, Policy Automation Directorate established a Configuration Management board by the Program Manager for TPS [legacy system] and USXPORTS Program Manager. The purpose of the board is to ensure that the two initiatives are seamless for the legacy system and the program manager for USXPORTS and ensure a seamless merge of those two initiatives into a single Defense system. In addition, the primary focus as redirected by the OIG is to ensure connectivity with the Military Departments and Defense subject matter experts involved in the export license review process. Those actions meet the intent of our recommendation.

Status of the IG DoD, Report No. D-2001-088, “DoD Involvement in the Review and Revision of the Commerce Control List and the U.S. Munitions List,” March 23, 2001

Recommendation for the Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation)²⁹

Recommendation A.1. Establish a process for working with Commerce to facilitate periodic interagency reviews of the CCL.

Status: Open. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) stated that Defense will work with Commerce to encourage them to adopt a regular schedule for reviewing relevant portions of the CCL and ensure that the list is up to date to reflect the most recent international security environment and technology. In April 2002, Defense wrote to Commerce asking to begin the process of updating the CCL. Because Defense

²⁹Technology Security Policy and Counter-Proliferation was formerly known as Technology Security Policy.

did not receive a response from Commerce, Defense sent a second memorandum to Commerce in November 2002, reiterating the need to begin an update.

Recommendation A.2. Work with Commerce to determine if any of the items currently controlled unilaterally by the United States should be removed from the CCL.

Status: Open. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) stated that while foreign policy is not a direct Defense responsibility, Defense does agree that regular interagency reviews of items on the CCL controlled unilaterally might benefit from Defense expertise. Defense will endeavor to offer its expertise to Commerce and State for reviews of the CCL. In April 2002, Defense wrote to Commerce requesting update of the CCL. Because Defense did not receive a response from Commerce, Defense sent a second memorandum in November 2002, reiterating the need to begin an update.

Recommendation A.3. Work with Commerce to determine if any of the countries to which controls apply should be removed from the Commerce Country Chart.

Status: Open. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) concurred stating that although complicated, the Commerce Country Chart needs updating to reflect the most recent international security environment. Defense will support a review of the Commerce Country Chart in the EAR.

Recommendation B.2. (a) Establish goals and procedures for the Military Critical Technologies Program to include scheduled meetings of all Technical Working Groups on a periodic basis. (b) Ensure that a Military Critical Technologies Program adequately supports the Technical Working Groups in their review of the Militarily Critical Technologies List at regular intervals.

Status: Closed. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) stated that Technical Working Groups can be a valuable technical resource that augment Defense capabilities. DTSA intends to continue scheduling meetings of Technical Working Groups that will augment resources as necessary with appropriate regularity for meeting Defense export control requirements.

Recommendation C.2. Continue to work with Commerce to establish a process whereby all commodity classification requests are reviewed by the Defense Threat Reduction Agency in a disciplined and transparent procedure with strict time frames.

Status: Open. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) concurred, stating that Defense is continuing to discuss the important matter of handling commodity classification requests with Commerce and other agencies, particularly in context of Senate consideration of a bill that reauthorizes the EAA. The EAA mandates Defense review of Commerce

commodity classifications. In November 2002, the Deputy Under Secretary of Defense (Policy Support) informed Defense that the pending EAA was not expected to pass, and a new EAA was expected to be introduced in the 108th Congress.

Recommendation for the Director, Defense Threat Reduction Agency

Recommendation B.1. Ensure that adequate funding and resources are available to support regular reviews of the list of Militarily Critical Technologies.

Status: Closed. The Deputy Under Secretary of Defense (Technology Security Policy and Counter Proliferation) concurred, stating that adequate funding and resources should be available to support regular review of the list of Militarily Critical Technologies. However, the Militarily Critical Technologies Program is not the only resource that DTSA and Defense use for examining and modifying export control lists, and past resources have been adequate to meet requirements.

Recommendation C.1. Provide adequate resources to decrease processing times for review of CJ requests.

Status: Open. The Deputy Under Secretary of Defense (Technology Security Policy and Counter-Proliferation) stated that the DTSA and Defense increased by 12 employees the Technology Security Directorate Licensing Division. However, CJ request determinations are often complicated and require more time than license applications reviews. While Defense agreed that processing times for CJ requests could be improved, processing time was not a metric for determining the effectiveness of the CJ request process as with license applications review.

Status of the IG DoD, Report No. D-2000-110, “Export Licensing at DoD Research Facilities,” March 24, 2000

Recommendations for the Under Secretary of Defense for Policy

Recommendation A.1.a. Coordinate with Commerce and State to develop guidance regarding when a visit or assignment of a foreign national to a Defense facility requires a deemed export license.

Status: Open. The Under Secretary of Defense for Policy reported that the draft interim guidance on export licensing requirements at Defense research facilities is being staffed within the Office of Secretary of Defense. Draft DoD Directive 2040.2, “International Transfers of Technology, Goods, Services, and Munitions,” completed an internal Defense Technology Security administration review and was sent out for initial coordination on October 30, 2002. The DoD Directive 5230.20, “Visits, Assignments, and Exchanges of Foreign Nationals,” revision is underway. The directive will incorporate Defense policies regarding “deemed export licensing.”

Recommendation A.1.b. Revise DoD Directive 2040.2, “International Transfers of Technology, Goods, Services, and Munitions,” to clearly state policies, procedures, and responsibilities of DoD and Military Department hosts for determining whether a deemed export license is required when a foreign national visits a Defense facility.

Status: Open. The Defense Technology Security Administration initially reported that the revisions should be ready for Defense-wide coordination as well as the Commerce and State by October 2002. The Defense Technology Security Administration completed an internal review of Draft DoD Directive 2040.2, “International Transfers of Technology, Goods, Services, and Munitions,” and sent it out for initial coordination on October 30, 2002.

Recommendation A.1.c. Revise DoD Directive 5230.20, “Visits, Assignments, and Exchanges of Foreign Nationals,” to clearly state policies, procedures, and responsibilities of DoD and Military Department hosts for determining whether a deemed export license is required when a foreign national visits a Defense facility.

Status: Open. A report from the Office of the Under Secretary of Defense (Policy) on the status of this corrective action initially had a completion date of April 2002. The Defense Technology Security Administration reported that by May 2002, it would provide clear export guidance to the Under Secretary of Defense (Policy) Policy Administration to be included in their update of DoD Directive 5230.20, “Visits, Assignments, and Exchanges of Foreign Nationals,” which is to be coordinated with Commerce and State. In December 2002, the Defense Technology Security Administration reported that DoD Directive 5230.20 revision is underway and will incorporate Defense policies regarding “deemed export licensing.”

Recommendations for the Director for Defense Research and Engineering

Recommendation A.2.a. Coordinate with Commerce and State to develop guidance regarding when a visit or assignment of a foreign national to a Defense facility requires a deemed export license.

Status: Open. The Director, Defense Research and Engineering is working with DTSA to coordinate with Commerce and State development of guidance regarding when a visit or assignment of a foreign national to a Defense research facility requires a deemed export license. Original anticipated completion date was April 2002. In November 2002, the Director, Defense Research and Engineering reported that the controlling Defense guidance was being revised.

Recommendation A.2.b. Establish a focal point at each Defense research facility to determine whether a deemed export license is required when a foreign national visits the facility.

Status: Open. When export control program guidance has been fully developed, the Director, Defense Research and Engineering will develop a memorandum that directs each Defense research facility appoint a focal point for deemed export license determinations and the use of the guidance document to be developed, as

described below. Anticipated completion date was originally reported as July 31, 2001. However, controlling guidance is being revised. No estimated date of completion was provided.

Recommendation A.2.c. Develop an export control program document containing procedures for determining if technology or commodities at Defense research facilities can be exported, with or without a license, including circumstances that may constitute exemptions from requirements of the Export Administration Regulations or the International Traffic in Arms.

Status: Open. The Director, Defense Research and Engineering is working with DTSA to develop an export control program document that contains procedures for determining whether technology or commodities at Defense research facilities can be exported to foreign countries, with or without a license. Guidance developed jointly with Commerce and State will be included. The document is to be coordinated with the Office of the Under Secretary of Defense (Policy) and Service representatives prior to submission for publication. Anticipated completion date was originally reported as July 13, 2001. Controlling guidance is being revised. No estimated date of completion was provided.

Recommendation A.2.d. Mandate training requirements for personnel at Defense research facilities on the deemed export licensing requirements of the Export Administration Regulations and the International Traffic in Arms Regulations.

Status: Open. The Director, Defense Research and Engineering has been working with the Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence to develop a process that improves counterintelligence support to DoD research facilities. The process includes development of Counterintelligence Support Plans at each facility. Each Counterintelligence Support Plan will include a requirement for threat awareness training for personnel at these facilities. The Director, Defense Research and Engineering will work with the Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence to ensure that the training addressed in the Counterintelligence Support Plans includes deemed export licensing requirements and that deemed export licensing is addressed in implementing regulation for draft DoD Directive 5230.39, "Research and Technology Protection Within the Defense Department." Guidance has been revised. No estimated date of completion was provided.

Recommendations for the Deputy Under Secretary of Defense (International and Commercial Programs)

Recommendation B.1. The Deputy Under Secretary of Defense (International and Commercial Programs) (a) rescind the 1994 policy memorandum, "Implementing Arrangements to Research and Development Umbrella Agreements." (b) Revise DoD Instruction 2015.4, "Mutual Weapons Development Data Exchange Program and Defense Development Exchange Program," to delegate authority to the Military Departments for coordinating data exchange agreement annexes with Commerce.

Status: Closed. In November 2000, a Statement of Principles between Defense and Commerce was signed. The Statement concerns the consultation of acquisition, technology, and logistics-related international agreements, including Data Exchange Annexes and Information Exchange Annexes, between both Defense and Commerce. A December 13, 2000, memorandum from the Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) requires the Military Departments to transmit prior to signature draft Data Exchange Annexes or Information Exchange Annexes to Commerce for review. A memorandum on the Defense implementation of the Statement of Principles was issued December 2000. On February 7, 2002, DoD Instruction 2015.4 was reissued to delegate authority to the military departments to provide annex copies to Commerce in accordance with the above memorandum. Those actions meet the intent of our recommendation.

Recommendation for the Services: Army, Navy, and Air Force

Recommendations B.2-B.4. Army, Navy, and Air Force update their guidance to delineate clear procedures for coordinating Data Exchange Annexes with Commerce.

Status: Closed. The three Services have agreed to update their respective guidance, upon the revision of DoD Instruction 2015.4, "Mutual Weapons Development Data Exchange Program and Defense Development Exchange Program." On February 7, 2002, DoD Instruction 2015.4 was reissued which delegated authority to the Military Departments to provide annex copies to Commerce prior to the signing of the annexes. The three Services have taken steps to reissue guidance to comply with the above. Those actions meet the intent of our recommendations.

Department of Energy Recommendations

Status of the Energy OIG Report No. DOE/IG-0533, "Inspection of the Department of Energy's Automated Export Control System," December 2001

Recommendations for the Assistant Deputy Administrator for Arms Control and Nonproliferation

Recommendation 1. Coordinate with Commerce and the Treasury to ensure access by Energy to information within AES regarding the purchase and/or shipment of commodities under an approved export license, and develop guidelines for Energy's access to the information.

Status: Open. Although Energy reported in a tracking report that they receive data from AES on a disk and the OIG initially closed this recommendation, we subsequently learned that Energy does not receive information from the U.S. Census Bureau (Census), of Commerce, which maintains AES for Commerce and the Treasury. We learned that Energy is currently preparing a memorandum of understanding to obtain access to export information at Census and that Census is designing a new system to replace AES and to allow broad interagency access to their information. Because of the information Energy OIG obtained, we reopened this recommendation and asked that Energy expedite its efforts to obtain access to export information maintained by Census.

Recommendation 2. Coordinate with the Department of State to:

a. Improve communications regarding reviews of export license applications for munitions commodities.

Status: Open. Energy reported that an electronic link between the two agencies would not occur but that Energy would continue to receive hard copy data on the resolution of munitions cases for which Energy has an interest. The OIG determined that this response does not address whether communication between Energy and State regarding reviews of export license applications for munitions commodities has improved. This recommendation will, therefore, remain open. To improve communication about information relevant to export license applications for nuclear-related munitions commodities, Energy should facilitate dialogue with State.

b. Ensure access by Energy to information maintained by State regarding final disposition (i.e., approval/denial of license applications and the purchase and/or shipment of commodities) of export license applications and develop guidelines for Energy's access to the information.

Status: Open. Energy reported that an electronic link between these two agencies would not occur but that Energy would continue to receive hard copy data on the resolution of munitions cases for which Energy has an interest. The OIG determined that this response does not indicate whether Energy is guaranteed

access to information maintained at State regarding final disposition of export license applications or if guidelines for Energy's access to this information are being developed. This recommendation will therefore, remain open. To improve access to information relevant to export license applications for nuclear-related munitions commodities, Energy should facilitate dialogue with State.

Status of the Energy OIG Report No. DOE/IG-0465, "Inspection of the Department of Energy's Export License Process for Foreign National Visits and Assignments," March 2000

Recommendations for the Acting Deputy Administrator for Defense Nuclear Nonproliferation

Recommendation 1. Ensure that senior Energy officials work with senior Commerce officials to assure clear, concise, and reliable guidance is obtained in a timely manner from Commerce regarding the circumstances under which a foreign national's visit or assignment to a Energy site would require an export license."

Status: Closed. Energy was advised by the Commerce Assistant Secretary for Export Administration that extensive guidance regarding compliance with the deemed export rule was available on the Commerce Web site and that Commerce would continue and strengthen its outreach and training programs for Energy's National Laboratories. Based upon those actions, the recommendation is closed.

Recommendation 6. Ensure that guidance issued by the Nuclear Transfer and Supplier Policy Division to advise hosts of their responsibilities regarding foreign nationals includes the appropriate level of oversight to be provided by the host during the period of the visit or assignment."

Status: Open. Energy reported that draft Energy Order 142.X, "Unclassified Foreign Visits and Assignments," was submitted into Energy's Review and Comment System and that the comment period is closed. Energy further reported that the comments are being reviewed and "a path forward" intended to resolve conflicting comments is being developed. Energy further reported that the draft Order incorporates principal roles and responsibilities for hosts of foreign national visitors and assignees. This recommendation will remain open until corrective action is completed.

Recommendations for the Director, Office of Security and Emergency Operations

Recommendation 2. Ensure that the revised Energy Notice includes the principal roles and responsibilities for hosts of foreign national visitors and assignees, and should ensure that a proposed revision of the Energy Notice concerning unclassified foreign visits and assignments includes the principal roles and responsibilities for hosts of foreign national visitors and assignees.

Status: Open. Energy reported that draft Energy Order 142.X, "Unclassified Foreign Visits and Assignments," was submitted to Energy's Review and

Comment System and that the comment period is closed. Energy also reported that the comments are being reviewed and “a path forward” intended to resolve conflicting comments is being developed. This recommendation will remain open until corrective action is completed.

Recommendation 3. Ensure that the revised Energy Notice includes a requirement for Energy and Energy contractor officials to enter required foreign national visit and assignment information into the Foreign Access Records Management System or a designated central database, in a complete and timely manner.

Status: Closed. Energy reported that a new Energy-wide information system, the Foreign Access Centralized Tracking System, was developed and implemented. Energy further advised that draft Energy Order 142.X, “Unclassified Foreign Visits and Assignments,” includes a requirement for Energy sites to enter required foreign national visit and assignment information into the Foreign Access Centralized Tracking System in a complete and timely manner. We determined that because this recommendation duplicates Recommendation 8, which recommends that all Energy sites enter foreign visit and assignment information into a central Energy database, we consider Recommendation 3 closed and will track this issue under Recommendation 8.

Recommendation 5. Ensure that the requirements in the revised Energy Notice for unclassified foreign national visits and assignments are clearly identified and assigned to responsible officials or organizations.

Status: Open. Energy reported that draft Energy Order 142.X, “Unclassified Foreign Visits and Assignments,” was submitted to review and comment and the comment period is closed. Energy further reported that the comments are being reviewed and “a path forward” intended to resolve conflicting comments is being developed. This recommendation will remain open until corrective action is completed.

Recommendation 7. Revise Energy policy regarding foreign national visits and assignments to ensure that consistent information is being maintained by Energy sites regarding foreign nationals visiting or assigned to work at the site.

Status: Open. Energy reported that draft Energy Order 142.X, “Unclassified Foreign Visits and Assignments,” was submitted into Energy’s Review and Comment System and the comment period is closed. Energy further reported that the comments are being reviewed and “a path forward” intended to resolve conflicting comments is being developed. Energy further reported that the draft Order incorporates principal roles and responsibilities for hosts of foreign national visitors and assignees. This recommendation will remain open until corrective action is completed.

Recommendation 8. Revise Energy policy regarding foreign national visits and assignments to ensure that all Energy sites having foreign national visitors or assignees are required to enter information regarding the visits or assignments into Foreign Access Records Management System or a designated central Energy database.

Status: Open. Energy reported that draft Energy Order 142.X, “Unclassified Foreign Visits and Assignments,” was submitted into Energy’s Review and Comment System and the comment period is closed. Energy further reported that the comments are being reviewed and a “path forward” intended to resolve conflicting comments is being developed. Energy reported that the Deputy Secretary of Energy’s November 5, 2001, memorandum, entitled “Departmental Use of the Foreign Access Central Tracking System,” requires the immediate and continued use of the Foreign Access Centralized Tracking System, which records the Energy foreign visits and assignments at facilities, was not declared “exempt” in Secretary of Energy Bill Richardson’s memorandum of July 14, 1999, “Unclassified Foreign Visits and Assignments.” Energy reported that draft Energy Order 142.X, “Unclassified Foreign Visits and Assignments,” expands the requirement (established July 14, 1999 by Energy Notice and Policy 142.1) to include the “exempt” laboratories. Energy further reported that the requirement to enter all foreign national visitors and assignees into the Foreign Access Centralized Tracking System will provide departmental senior management with a complete and up-to-date accounting for which the Secretary is responsible and ensure that Energy can provide complete, valid information to Congress and Executive Agencies as required. This recommendation will remain open until corrective action is completed.

Recommendation for the Manager, Oak Ridge Operations Office

Recommendation 4. Ensure that requests for foreign national visits and assignments at the Oak Ridge site involving sensitive countries or sensitive subjects are reviewed by the National Security Program Office to assist in identifying those foreign nationals who might require an export license in conjunction with their visit or assignment.”

Status: Closed. Energy reported that to ensure that requests for foreign national visits and assignments at the Oak Ridge National Laboratory receive appropriate export license consideration, Oak Ridge National Laboratory initiated a system of reviews. Under the system, five separate disciplines (Cyber Security, Export Control, Classification, Counterintelligence, and Security) review the requests. In addition, requests associated with concerns are referred for resolution to the Non-citizen Access Review Committee. Energy further reported that while each of the reviews can involve the National Security Program Office, the Oak Ridge National Laboratory Export Control Office is the office responsible for referring requests to the National Security Program Office as necessary. Based on the actions taken by the Manager, Oak Ridge Operations Office, the recommendation was closed.

Department of State Recommendations

Status of State OIG Report No. IT-A-02-02, "Streamlined Processes and Better Automation Can Improve Munitions License Reviews," March 2002

Recommendations for the Assistant Secretary for Political-Military Affairs

Recommendation 1. Identify and document business requirements, including the need for electronic data exchange, among all participants involved in the munitions export licensing process.

Status: Closed. The Office of the Assistant Secretary for Political-Military Affairs stated that extensive efforts have been undertaken to identify business requirements for the defense trade controls function. Efforts of the Office of the Assistant Secretary for Political-Military Affairs' have, to date, been to:

- Examine the underlying rationale of the munitions export licensing function to determine which policies and activities comprise the function and how it is performed;
- Inspect day-to-day activities to determine the degree to which they support the mission objectives of the Bureau and Department;
- Reiterate the importance of the function being administered according to emerging technological, economic, political, and military trends, rather than in a vacuum;
- Create a means of communication among representatives from other agencies, Defense industry, Congress, and the foreign government;
- Pursue a comprehensive management strategy for IT with support from the Political-Military Affairs and Information Resource Management Bureaus and the Office of Verification Operations to reduce human resource costs, improve program effectiveness, and ensure consistent results;
- Refine business rules and guidelines with participation from a focus group and Bureau of Political-Military Affairs senior management;
- Enlist the assistance of Information Resource Management in process and data modeling for the IT pilot program;
- Solicit 13 Defense companies of varying size and volume to be participants in the IT pilot program;
- Conduct detailed discussions with policy and technical experts within Defense about case review procedures and the role of IT; and,

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- Make additional progress in codifying the types of information to be collected from industry for case referrals.

Based on those actions, the recommendation is closed.

Recommendation 2. Reengineer the process to address identified business requirements and promote efficient and timely license processing.

Status: Closed. The Office of the Assistant Secretary for Political-Military Affairs has made significant progress in reengineering its export licensing process, including:

- Assessing the extent to which programs and activities meet U.S. national security goals, foreign policy objectives, and desired operational outcomes;
- Increasing focus on export licensing case management;
- Consulting with primary referral points of contacts for DDTC;
- Enhancing training for licensing officers;
- Disseminating a licensing handbook with process guidelines to licensing officers agency-wide;
- Reducing license review timelines to a median of 8 days;
- Participating in USXPORTS Steering Committee meetings to provide policy and technical level staff the opportunity to discuss license handling issues;
- Providing written comments and suggestions to Defense for collecting additional information during licensing reviews;
- Working extensively within the Bureau of Political-Military Affairs to detail logistical and technical procedures for export case referrals using the pilot program; and,
- Developing the capability to electronically transmit export licensing data, along with voluminous background materials, to Departmental bureaus.

Based on those actions, the recommendation is closed.

Recommendation 3. Develop and implement an effective, interoperable IT systems approach to support electronic data exchange in the reengineered munitions export licensing process, coordinating with the State Department's Chief Information Officer on a continuing basis to ensure oversight of the planned IT systems initiatives and investments and their confluence with Federal and Departmental requirements for managing IT.

Status: Open. The Office of the Assistant Secretary for Political-Military Affairs and State's Chief Information Officer agreed to conduct an electronic licensing pilot to support license processing systems modernization and fulfill objectives embodied in relevant U.S. laws and security and procurement regulations. With Chief Information Officer endorsement, funding support for the pilot has been approved by the IT Program Board.

A memorandum of agreement on IT connectivity that outlines operational, technical, and security responsibilities of agencies in this collaborative effort and the exchange of licensing data was drafted. As outlined in a project plan, the Office of the Assistant Secretary for Political-Military Affairs plans to expand connectivity to all relevant State offices, refine communications ties to Defense, and explore means of classified linkages with Energy and unclassified exchange with Commerce to ensure more efficiency in the interagency licensing process.

The Office of the Assistant Secretary for Political-Military Affairs is developing the IT pilot system, "D-Trade," which will eliminate the current regulatory need for paper documentation in export licensing reviews. By using the D-Trade system, the Office of the Assistant Secretary for Political-Military Affairs will incorporate knowledge management technology to help increase license processing speed, ensure information security via Public Key Infrastructure, and automate internal licensing officer assignments and routing information. The system will also provide interfaces with Defense and other agencies that expedite the staffing and receipt of electronic files, summaries, and application data.

The Office of the Assistant Secretary for Political-Military Affairs was able to post a Web site on the Internet that would allow experimentation of data preparation and communications. The office also procured the required software and hardware for the system. The Office of the Assistant Secretary for Political-Military Affairs is working on initiating Public Key Infrastructure-protected on-line registration for individuals engaged in Defense trade and arms brokering and electronic submission of CJ determination requests. Further, user handbooks and technical system documentations are near completion. Full implementation of D-Trade is expected by late FY 2003 or early FY 2004.

Based on OIG analysis of the Office of the Assistant Secretary for Political-Military Affairs' progress, this recommendation will remain open until the memorandum of agreement is signed and D-Trade, the IT pilot system, is implemented with measurable results.

Recommendation 4. Assess information security risks in the reengineered munitions export licensing process and supporting interoperable systems environment and develop and implement an information security strategy to manage those risks effectively.

Status: Open. The Office of the Assistant Secretary for Political-Military Affairs is examining security in multiple ways, to include:

- Coordinating with State's Public Key Infrastructure Office to ensure security and authentication in electronic license data transmissions;

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- Ensuring that interagency agreements on data sharing and connectivity include appropriate information handling and security safeguards;
 - Exploring the feasibility of using existing classified networks as part of the electronic license processing system; and,
 - Collaborating with the State's IT Configuration Control Board and Bureau of Diplomatic Security on systems certification and accreditation and establishment of comprehensive business continuity and disaster recovery plans.

Further, the Office of the Assistant Secretary for Political-Military Affairs in conjunction with the Office of Verification Operations and the Bureau of Information Resource Management, are determining whether the approach to sharing data with other agencies requires additional protection beyond that provided by Defense's secured network or other Internet-based systems. The Office of the Assistant Secretary for Political-Military Affairs previously suggested that Defense draw upon the functionality of State's classified network or the Secret Internet Protocol Router Network used in the intelligence community to avoid additional costly resources for IT validation, security certification, systems updates, and hardware/software maintenance. Defense does not favor this suggestion; therefore, the Office of the Assistant Secretary for Political-Military Affairs is still discussing this issue with policy-level Defense representatives.

The recommendation will remain open until a memorandum of understanding is agreed upon and signed by the Office of the Assistant Secretary for Political-Military Affairs and Defense executives. The memorandum regards the level of protection needed for the pilot system, licensing systems modernization is implemented, and projected information security controls, systems, certifications, and plans are in place.

Status of State OIG Report No. 01-FP-M-027, "U.S. Munitions List and the Commodity Jurisdiction Process," March 2001

Recommendations for the Directorate of Defense Trade Controls

Recommendation 1. Develop procedures to regularly notify Commerce and Defense of deadlines for specific cases, in order to conform with NSC time guidelines.

Status: Closed. DDTC stated that they have made an effort to close cases that exceeded the guidelines, to keep new cases within the guidelines, and to ensure that Commerce and Defense are notified of deadlines consistent with NSC guidelines. DDTC has also clearly established national security standards and goals that the President and Secretary of State established in the Bureau of Political-Military Affairs FY 2004 Bureau Performance Plan. Based on that action, the recommendation is closed.

Recommendation 2. Develop and implement a plan to improve its CJ procedures in order to meet NSC time guidelines.

Status: Closed. DDTC stated that they have assigned a second full-time licensing officer to process CJ determinations. DDTC has also stated that the 23 additional full-time equivalent positions authorized in FY 1999 have been filled, resulting in a doubling of licensing officers, and the DDTC Bureau Performance Plan clearly establishes the substantive and performance based relationship between defense trade control activities, including CJ determinations, and national security standards and goals. Based on that action, the recommendation is closed.

Recommendation 3. Inform the relevant agencies of all the CJ requests it receives and inform relevant agencies of its decision on each jurisdiction request.

Status: Closed. DDTC stated that they inform Defense and Commerce of any CJ request received and of their decisions. DDTC also stated that the clarification of the DDTC policy of informing Defense and Commerce of all CJ requests received and of State final actions and clarifying procedures have been distributed to Defense and Commerce; including clarification on the export jurisdiction process, and a secure unclassified electronic referral system for CJ cases had been designed. Based on that action, the recommendation is closed.

Recommendation 4. Create a more efficient and transparent CJ process by coordinating with Commerce and Defense to obtain a secure automated system for processing, referring, and storing historical data on CJ cases.

Status: Closed. DDTC stated that an electronic licensing proof of concept that would allow automated handling of CJ cases is being developed. DDTC also stated that the "Streamlined Processes and Better Automation Can Improve Munitions License Reviews" audit contains a similar recommendation and that this recommendation should be closed. Based on our verification of that information, the recommendation is closed.

Recommendation 5. Coordinate with the Bureau of Information Resource Management and establish an e-mail system.

Status: Closed. DDTC stated that licensing personnel have e-mail connectivity with other State offices as well as Defense on ClassNet and that they will be given priority for installation of Open Net Plus when the system is certified. Based on this action, the recommendation is closed.

Recommendation 6. Coordinate with Commerce and Defense in updating the 1992 memorandum of understanding on night vision commodities and request that Defense add USML category for night vision commodities to the Defense Trade Security Initiative Number 17 review for 2002.

Status: Closed. DDTC stated that they proposed to Defense that the relevant category should be included in USML review. Defense agreed and the review is

ongoing. The corrective action is responsive to the OIG recommendation and it is closed.

Recommendation 7. Establish written policies and procedures for the Government jurisdiction process in coordination with all Government agencies involved in the CJ process.

Status: Closed. DDTC stated that they have taken steps to remind Defense and Commerce that the CJs are to be relied on in jurisdictional questions engaging U.S. exporters. Based on the DDTC response to Recommendation 3 above, this recommendation is closed.

Status of State OIG Report No. 00-CI-008, “Department of State Controls Over the Transfer of Militarily Sensitive Technologies to Foreign Nationals from Countries and Entities of Concern,” March 2000

Recommendations for the Directorate of Defense Trade Controls

Recommendation 1. DDTC should improve its tracking capabilities for foreign nationals on export munitions licenses to prevent the transfer of sensitive data to countries of concern. DDTC should use its existing database to track foreign nationals listed on export munitions licenses, including, at a minimum, the name and nationality of the individual.

Status: Closed. DDTC reported that it established a computer coding capability to track foreign nationals from countries of concern whose U.S. Defense industry employment has been authorized by a munitions license.

Recommendation 2. DDTC should highlight in its outreach programs compliance with existing licensing requirements for the transfer of information to foreign nationals.

Status: Closed. DDTC reported that it participated in seminars, workshops, and conferences where they presented information regarding the transfer of information to foreign nationals. Based on this action, the recommendation is closed.

Recommendation 3. DDTC should develop a plan of action, based on an analysis of the effectiveness of the first year program, for the number and scope of future reviews including additional personnel and resources.

Status: Closed. DDTC reported that oversight reviews are conducted through on-site visits to U.S. corporations. Based on discussions with compliance officials during our joint review of export control enforcement, representatives from U.S. corporations are increasingly invited to DDTC for briefings on their responsibilities for safeguarding militarily sensitive technologies. Based on this action, the recommendation is closed.

Department of the Treasury Recommendations

Status of the Treasury OIG Report No. OIG-02-065, “Export Licensing Process: Progress Has Been Made But Better Cooperation And Coordination Are Needed,” March 14, 2002

Recommendation for the Commissioner, Bureau of Customs and Border Protection, U.S. Department of Homeland Security

Recommendation 1. In accordance with the Automation Initiative and the Government Paperwork Elimination Act, coordinate with State to ascertain the feasibility of eliminating the paper Shipper’s Export Declaration requirement.

Status: Open. The Commissioner stated Customs will meet with State to discuss future plans to ascertain the feasibility of eliminating the paper Shipper’s Export Declarations requirement. Planned corrective action date is December 31, 2003. Therefore, the planned corrective action date has not been reached and the recommendation remains open as of February 25, 2003.

Recommendation 2. Continue efforts to encourage participation in AES with agencies involved in the export licensing process.

Status: Open. The Commissioner stated Customs will meet with the agencies involved in export licensing to discuss their plans for automation of the export licensing process and continue encouragement for participation in AES. Planned corrective action date is December 31, 2003. Therefore, the planned corrective action date has not been reached and the recommendation remains open as of February 25, 2003.

Recommendation for the Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

Recommendation 3. Coordinate with State to determine the feasibility of enhancing the National Firearms Registration and Transfer Record database to include connectivity with State.

Status: Open. The Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives stated that a memorandum dated June 14, 2002, was sent to the OIG explaining that the Bureau of Alcohol, Tobacco, Firearms and Explosives would explore connectivity with State. Further, the Director advised the OIG that the Bureau of Alcohol, Tobacco, Firearms and Explosives would not explore connectivity until the completion of their Firearms Integrated Technology program, which will combine and standardize their existing firearms databases. This project will be ongoing for several years with an anticipated completion date no earlier than calendar year 2005. At that time, this recommendation will be reexamined.

**Recommendation for the Director, Office of Foreign Assets Control,
Department of the Treasury**

Recommendation 4. Pursue a partnership agreement with Customs/Census that will provide direct access to AES and stipulate the data that will be accessible by Office of Foreign Assets Control personnel.

Status: Closed. The Director sent a memorandum to the Chief of the Foreign Trade Division, Census on October 7, 2002. This memorandum requested a National Interest Determination be made that will lead to the execution of a memorandum of understanding for the Office of Foreign Assets Control's access to AES. Therefore, the planned corrective action has been fulfilled and the recommendation is closed.

Acronyms

CCATS	Commodity Classifications
CCL	Commerce Control List
CJ	Commodity Jurisdiction
ECASS	Export Control Automated Support System
IT	Information Technology
NIST	National Institute of Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
NSC	National Security Council
USXPORTS	U.S. Export Systems

Appendix C. Department of Commerce Report

Appendix D. Department of Defense Report

Appendix E. Department of State Report

Appendix F. Department of the Treasury Report

Appendix G. U.S. Postal Service Report

Appendix H. Central Intelligence Agency Report

Appendix I. Department of Commerce Memorandum